TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 97

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

No. 98

MARYLAND PORT AUTHORITY, ET AL., APPELLANTS,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

No. 99

INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

FILED MAY 1, 1962

PROBABLE JURISDICTION NOTED JUNE 11, 1962

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., NOVEMBER, 1962

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[fol. A] Secretary's certificate (omitted in printing).

[fol. D]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Board of Suspension, Washington, D. C.

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

ORDER—July 6, 1956

It appearing, That there have been filed with the Interstate Commerce Commission tariff schedules setting forth new rates and charges, and new rules, regulations and practices affecting such rates and charges, applicable on interstate or foreign commerce, to become effective July 10, 1956, and later, designated as follows:

C. W. Boin, Agent:

Supplements 14 and 15 to I.C.C. A-942 in full;
Supplements 12 and 13 to I.C.C. A-961 of C. W. Boin, Agent and I.C.C. 635 of O. E. Swenson, Agent in full;
Supplements 20 and 21 to I.C.C. A-966 of C. W. Boin, Agent and I.C.C. 640 of O. E. Swenson, Agent in full;

C. W. Boin, Agent:

Supplements 35 and 36 to I.C.C. A-1017 in full;

H. R. Hinsch, Agent:

Supplements 259 and 260 to I.C.C. 3422 in full;
Supplements 114 and 115 to I.C.C. 3472 in full;
Supplements 254 and 255 to I.C.C. 3642 in full;
Supplements 89 and 90 to I.C.C. 4350 in full;
Supplements 76 and 77 to I.C.C. 4403 in full;
Supplements 176 and 177 to I.C.C. 4542 in full;

R. B. LeGrande, Agent:

Supplement 22 to I.C.C. 256 in full;

O. E. Swenson, Agent:

Supplement 154 to I.C.C. 362 and MF-I.C.C. 22 in full;
Supplement 198 to I.C.C. 591 and MF-I.C.C. 90 in full;
Supplement 71 to I.C.C. 604 in full;

The Baltimore and Ohio Railroad Company:

Supplement 27 to I.C.C. 23847 in full;
Supplement 53 to I.C.C. 24092 in full;
Supplement 41 to I.C.C. 24097 in full;
Supplement 17 to I.C.C. 24105:
on page 3 thereof, Index Nos. 7150, 7555, and 3761 to 4940 inclusive, also under the caption "Table of Rates" Rate Basis Nos. 882, 883 and 884;
Supplement 43 to I.C.C. 24237:
on page 2 thereof, Items 420-O and 425C;
page 3 thereof in full;
on page 4 thereof Item 2920 A;
Supplement 45 to I.C.C. 24237:
on page 7 thereof, Items 420-P and 425-D;
Supplement 8 to I.C.C. 24246 in full;
[fol. E] Supplement 63 to I.C.C. 24248 in full;
Supplement 11 to I.C.C. 24250 in full;
Supplement 10 to I.C.C. 24255:
on page 3 thereof, Index Nos. 170, 175, 330, 655, 715 and 69;
Supplement 31 to I.C.C. 24271 in full;
Supplement 25 to I.C.C. 24289 in full;

Bessemer and Lake Erie Railroad Company:

Supplement 29 to I.C.C. 1276 in full;
Supplement 7 to I.C.C. 1284 in full;
Supplement 3 to I.C.C. 1285 and MF-I.C.C. 31 in full;
Supplement 15 to I.C.C. 1291:
page 5 thereof in full;
Supplement 3 to I.C.C. 1330 in full;

The Chesapeake and Ohio Railway Company:

Supplement 11 to I.C.C. 13032 in full;
Supplement 127 to I.C.C. 13099 in full;
Supplement 81 to I.C.C. 13153 in full;
Supplement 19 to I.C.C. 13383 in full;

The Delaware and Hudson Railroad:

Supplement No. 10 to I.C.C. No. 283:
On page 2 thereof, Item No. 120-A in full;

Erie Railroad Company:

Supplement 18 to I.C.C. A-7849 in full;

The New York Central Railroad Company:

Supplement 72 to I.C.C. 1238 in full;
Supplement 36 to I.C.C. 1603 in full;
ICC 1719 in full;

The Pennsylvania Railroad Company:

Supplement 22 to I.C.C. 2990 in full;
Supplement 21 to I.C.C. 3035 in full;
Supplement 16 to I.C.C. 3105 in full;
Supplement 8 to I.C.C. 3200 in full;
Supplement 14 to I.C.C. 3363 in full;
Supplement 14 to I.C.C. 3439 in full;
Supplement 2 to I.C.C. 3462 in full;
Supplement 1 to I.C.C. 3467 in full;
Supplement 1 to I.C.C. 3476 in full;

The Pittsburgh and Lake Erie Railroad Company:

Supplement 2 to ICC 3564 in full;
Supplement 5 to ICC 3565 in full;
Supplement 6 to ICC 3565:
all matter therein which is shown as a reissue of, or is the same as that suspended in Supplement 5;

[fol. F] The Pittsburgh & Shawmut Railroad Company:

Supplement No. 2 to I.C.C. No. 829 in full;

The Pittsburgh & West Virginia Railway Company:

Supplement 19 to I.C.C. 535;
on page 5 thereof, Item No. 690-B;
pages 6 and 7 thereof in full;
Supplement 20 to I.C.C. 535 in full;

Reading Company:

Supplement 9 to I.C.C. 2295:
pages 3 and 4 thereof, except the provisions shown as reissued;
Supplement 93 to I.C.C. 2297:
pages 3, 4 and 5 thereof, except the provisions shown as reissued;
Supplement 16 to I.C.C. 2324:
page 2 thereof, except the provision shown as reissued from Supplement 15;
page 3 thereof in full;
Supplement 10 to I.C.C. 2330:
on page 2 thereof, the Rate of 957 cents and all provisions in connection therewith, also the encircled reference "2" and the explanation thereof;
Supplement 9 to I.C.C. 2333:
page 2 thereof, except the provision preceded by the squared reference "7";
Supplement 34 to I.C.C. 2346:
page 5 thereof in full;
Supplement 5 to I.C.C. 2349:
on page 2 thereof, the Rates to Farrell and Sharon, Pa., and Youngstown, Ohio;

Western Maryland Railway Company:

Supplement 15 to I.C.C. 9044 in full;
Supplement 26 to I.C.C. 9067 in full;

and all other schedules contained in other tariffs and supplements insofar as they contain the same provisions or provisions of the same import as those hereinbefore suspended;

And it further appearing, That upon consideration of the said schedules and protests thereto there is reason to believe that they would, if permitted to become effective, result in rates and charges, rules, regulations or practices which would be unjust and unreasonable, unduly prejudicial and preferential, and unjustly discriminatory, all in violation of the Interstate Commerce Act; in contravention of the provisions of Section 4 of the Interstate Commerce Act without appropriate authority; and would constitute unfair and destructive competitive practices in contravention of the National Transportation Policy; and good cause appearing therefor;

[fol. 6] *It is ordered,* That an investigation be, and it is hereby, instituted into and concerning the lawfulness of the rates, charges and regulations contained in said schedules, with a view to making such findings and orders in the premise as the facts and circumstances shall warrant.

It is further ordered, That the operation of the said schedules be and it hereby is suspended, and that the use thereof on interstate and foreign commerce be deferred to and including February 9, 1957, unless otherwise ordered by this Commission.

It is further ordered, That the investigation in this proceeding shall not be confined to the matters and issues hereinbefore stated as the reason for instituting this investigation, but shall include all matters and issues with respect to the lawfulness of the said schedules under the Interstate Commerce Act.

It is further ordered, That neither the schedules hereby suspended nor those sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

And it is further ordered, That a copy of this order be filed with the schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to the said schedules and

that the said carriers be, and they are hereby, made respondents to this proceeding.

By the Commission, Board of Suspension.

Harold D. McCoy, Secretary.

[fol. H]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Board of Suspension

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

CORRECTED ORDER—July 6, 1956

It appearing, That there have been filed with the Interstate Commerce Commission tariff schedules setting forth new rates and charges, and new rules, regulations and practices affecting such rates and charges, applicable on interstate or foreign commerce, to become effective July 10, 1956, and later, designated as follows:

C. W. Boin, Agent:

Supplements 14 and 15 to I.C.C. A-942, in full;
Supplements 12 and 13 to Joint Tariff I.C.C. A-961 of C. W. Boin, Agent, and I.C.C. 635 of O. E. Swenson, Agent, in full;
Supplements 20 and 21 to Joint Tariff I.C.C. A-966 of C. W. Boin, Agent, and I.C.C. 640 of O. E. Swenson, Agent, in full;
Supplements 35 and 36 to I.C.C. A-1017, in full;

H. R. Hinsch, Agent:

Supplements 259 and 260 to I.C.C. 3422, in full;
Supplements 114 and 115 to I.C.C. 3472, in full;
Supplements 254 and 255 to I.C.C. 3642, in full;
Supplements 89 and 90 to I.C.C. 4350, in full;
Supplements 76 and 77 to I.C.C. 4403, in full;
Supplements 176 and 177 to I.C.C. 4542 in full;

R. B. LeGrande, Agent:

Supplement 22 to I.C.C. 256 in full;

O. E. Swenson, Agent:

Supplement 154 to I.C.C. 362 and MF-I.C.C. 22 in full;
Supplement 198 to I.C.C. 591 and MF-I.C.C. 90 in full;
Supplement 71 to I.C.C. 604, in full;

The Baltimore and Ohio Railroad Company:

Supplement 27 to I.C.C. 23847, in full;
Supplement 53 to I.C.C. 24092, in full;
Supplement 41 to I.C.C. 24097, in full;
Supplement 17 to I.C.C. 24105:
On page 3 thereof, Index Nos. 7150, 7555, and 3761 to 4940 inclusive, also under the caption "Table of Rates" Rate Basis Nos. 882, 883 and 884;
Supplement 43 to I.C.C. 24237:
On page 2 thereof, Items 420-O and 425C;
page 3 thereof, in full;
On page 4 thereof Item 2920 A;
Supplement 45 to I.C.C. 24237:
On page 7 thereof, Items 420-P and 425-D;
Supplement 8 to I.C.C. 24246, in full;
Supplement 63 to I.C.C. 24248, in full;
Supplement 11 to I.C.C. 24250, in full;
Supplement 10 to I.C.C. 24255:
On page 3 thereof, Index Nos. 170, 175, 330, 655, 715 and 69;
Supplement 31 to I.C.C. 24271, in full;
Supplement 25 to I.C.C. 24289, in full;

Bessemer and Lake Erie Railroad Company:

Supplement 29 to I.C.C. 1276, in full;
Supplement 7 to I.C.C. 1284, in full;
Supplement 3 to I.C.C. 1285, and MF-I.C.C. 31, in full;
[fol. 1] Supplement 15 to I.C.C. 1291:
page 5 thereof, in full;
Supplement 3 to I.C.C. 1330, in full;

The Chesapeake and Ohio Railway Company:

Supplement 11 to I.C.C. 13032, in full;
Supplement 127 to I.C.C. 13099, in full;
Supplement 81 to I.C.C. 13153, in full;
Supplement 19 to I.C.C. 13383, in full;

The Delaware and Hudson Railroad:

Supplement No. 10 to I.C.C. No. 283:
On page 2 thereof, Item No. 120-A, in full;

Erie Railroad Company:

Supplement 18 to I.C.C. A-7849, in full;

The New York Central Railroad Company:

Supplement 72 to I.C.C. 1238, in full;
Supplement 36 to I.C.C. 1603, in full;
ICC 1719, in full;

The Pennsylvania Railroad Company:

Supplement 22 to I.C.C. 2990, in full;
Supplement 21 to I.C.C. 3035, in full;
Supplement 16 to I.C.C. 3105, in full;
Supplement 8 to I.C.C. 3200, in full;
Supplement 14 to I.C.C. 3363, in full;
Supplement 14 to I.C.C. 3439, in full;
Supplement 2 to I.C.C. 3462, in full;
Supplement 1 to I.C.C. 3467, in full;
Supplement 1 to I.C.C. 3476, in full;

The Pittsburgh and Lake Erie Railroad Company:

Supplement 2 to ICC 3564, in full;
Supplement 5 to ICC 3565, in full;
Supplement 6 to ICC 3565:
all matter therein which is shown as a reissue of, or is the same as that suspended in Supplement 5;

The Pittsburgh & Shawmut Railroad Company:

Supplement No. 2 to I.C.C. No. 829;
On page 2 thereof, under caption Export Grain and Grain Products Rates, all rates preceded by the "dagger" reference mark, and all provisions insofar as they apply in connection therewith;

The Pittsburgh & West Virginia Railway Company:

Supplement 19 to I.C.C. 535;
On pages 5 to 7, inclusive, rates prefixed by encircled 36 in Items 690B, 700B, 720B, 730A, 740B, 750E, 760A and 770C and Supplement 20 to I.C.C. 535;

Reading Company:

Supplement 9 to I.C.C. 2295;
pages 3 and 4 thereof, except the provisions shown as reissued;
Supplement 93 to I.C.C. 2297:
On page 4 thereof, Commodity: Ore, Zinc and all rates and provisions in connection therewith;
On page 5 thereof, Commodity: Zinc Ore Concentrates and all rates and provisions in connection therewith;
Supplement 16 to I.C.C. 2324:
page 2 thereof, except the provision shown as reissued from Supplement 15;
page 3 thereof, in full;
Supplement 10 to I.C.C. 2330:
On page 2 thereof, the Rate of 957 cents and all provisions in connection therewith, also the encircled reference "2" and the explanation thereof;
[fol. J] Supplement 9 to I.C.C. 2333:
page 2 thereof, except the provision preceded by the squarred reference "7";
Supplement 34 to I.C.C. 2346:
page 5 thereof, in full;
Supplement 5 to I.C.C. 2349:
On page 2 thereof, the Rates to Farrell and Sharon, Pa., and Youngstown, Ohio;

Western Maryland Railway Company:

Supplement 15 to I.C.C. 9044, in full;
Supplement 26 to I.C.C. 9067, in full;

and all other schedules contained in other tariffs and supplements insofar as they contain the same provisions or provisions of the same import as those hereinbefore suspended;

And it further appearing, That upon consideration of the said schedules and protests thereto there is reason to believe that they would, if permitted to become effective, result in rates and charges, rules, regulations or practices which would be unjust and unreasonable, unduly prejudicial and preferential, and unjustly discriminatory, all in violation of the Interstate Commerce Act, in contravention of the provisions of Section 4 of the Interstate Commerce Act without appropriate authority; and would constitute unfair and destructive competitive practices in contravention of the National Transportation Policy; and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted into and concerning the lawfulness of the rates, charges and regulations contained in said schedules, with a view to making such findings and orders in the premise as the facts and circumstances shall warrant.

It is further ordered, That the operation of the said schedules be and it hereby is suspended, and that the use thereof on interstate and foreign commerce be deferred to and including February 9, 1957, unless otherwise ordered by this Commission.

It is further ordered, That the investigation in this proceeding shall not be confined to the matters and issues hereinbefore stated as the reason for instituting this investigation, but shall include all matters and issues with respect to the lawfulness of the said schedules under the Interstate Commerce Act.

It is further ordered, That neither the schedules hereby suspended nor those sought to be altered thereby shall be

changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

And it is further ordered, That a copy of this order be filed with the schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to the said schedules and that the said carriers be, and they are hereby, made respondents to this proceeding.

By the Commission, Board of Suspension.

Harold D. McCoy, Secretary.

[fol. K]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Import Rates From and To North Atlantic Ports

NOTICE, DATED AUGUST 2, 1956, OF PREHEARING CONFERENCE

The above-entitled proceedings are assigned for prehearing conference on September 11, 1956, at 8:30 o'clock a.m., United States Standard Time (9:30 o'clock a.m., District of Columbia Daylight Saving Time), at the Office of the Interstate Commerce Commission, Washington, D. C., before Examiner Boat.

The attention of the parties is directed to the General Rules of Practice, Rule 84(d), the provisions of which point to the desirability of interchange of exhibits and other pertinent material before the hearing.

By the Commission.

Harold D. McCoy, Secretary.

[fol. M]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I&S Docket No. 6615

In the Matter of:

EQUALIZATION OF RATES AT NORTH ATLANTIC PORTS

Fourth Section Application No. 32204

In the Matter of:

IMPORT AND IMPORT RATES FROM AND TO NORTH ATLANTIC PORTS

Hearing Room "A"
Interstate Commerce Commission
Washington, D. C.

Transcript of Prehearing Conference—Tuesday, September 11, 1956

Met, pursuant to notice, at 9:30 a.m.

BEFORE:

M. L. BOAT, Examiner.

APPEARANCES:

JOHN H. COLGREN, 466 Lexington Avenue, New York 17, New York, appearing for New York Central Railroad Company, respondent.

DONALD MACLEAY, 1625 K Street, N. W., Washington, D. C., appearing for Maryland Port Authority, intervenor.

WILLIAM L. MARBURY, Maryland Trust Building, Baltimore, Maryland, appearing for Maryland Port Authority, intervenor.

L. W. SCULLY, 232 St. John Street, Portland, Maine, appearing for Maine Central Railroad Company, petitioner for suspension of export rates only, respondent for suspension of import.

[fol. N] JULIAN Y. BEDOX, 15 N. 6th Street, Richmond, Virginia, for Richmond Chamber of Commerce, opposing N.Y. and Boston.

M. R. WARNOCK, 143 Liberty Street, New York 6, N. Y., appearing for Railroads serving New York.

C. B. O'HARA, 111 8th Avenue, New York 11, New York, appearing for Port of New York Authority.

CHARLES McD. GILLAN, 22 Light Street, Baltimore 2, Maryland, appearing for Baltimore Association of Commerce and Baltimore Chamber of Commerce.

NEAL J. HOLLAND, 150 Causeway Street, Boston 14, Massachusetts, appearing for Boston and Maine Railroad, respondent.

PETER CAMPBELL BROWN, Corporation Counsel, City of New York, by JAMES J. THORNTON and SIDNEY BRANDES, Assistant Corporation Counsels, appearing for the City of New York, Municipal Building, New York 7, New York, protestant.

W. Q. KEENAN, 54 Meadow Street, appearing for New Haven Railroad, respondent.

HEWITT BIAETT and JOHN W. HANIFIN, 1500 First National Bank Building, Richmond, Virginia, appearing for The Chesapeake and Ohio Railway Company, protestant-respondent.

ERLE J. ZOLL, JR., 135 E. 11th Place, Chicago 5, Illinois, appearing for Illinois Central Railroad Company.

J. T. CLARK, 1336 Midland Building, Cleveland 15, Ohio, appearing for Erie Railroad Company, respondent.

R. GRANVILLE CURRY and FREDERICK M. DOLAN, 631 [fol. O] Southern Building, Washington, D. C., appearing for Albany Port District Commission, Albany, New York.

WARREN PRICE, JR., 1116 Investment Building, Washington, D. C., appearing for Delaware River Port Authority.

E. H. BURGESS, A. P. DONADIO and C. J. HENRY, 301 B&O Building, Baltimore 1, Maryland, appearing for Baltimore & Ohio Railroad.

J. P. FISHWICK, 106 N. Jefferson Street, Roanoke, Virginia, appearing for Norfolk and Western Railway.

WILLIAM C. SEIBERT, State Office Building, Richmond, Virginia, appearing for State Corporation Commission of Virginia, intervenor-protestant.

WILBUR LAROE, JR. and S. H. MOERMAN, 743 Investment Building, Washington 5, D. C., appearing for Port of New York Autlrority, favoring equalization.

J. ARTHUR MULHERN, 111 8th Avenue, New York 11, New York, appearing for Port of New York Authority, favoring equalization.

RICHARD R. BONGARTZ, 1740 Broad Street Station Building, Philadelphia, Pennsylvania, appearing for Pennsylvania Railroad.

PAUL F. ROBINSON, 230 Park Avenue, New York, New York, appearing for The Delaware and Hudson Railroad Corporation, respondent.

RENE J. GUNNING, 501 St. Paul Place, Baltimore, Maryland, appearing for Western Maryland Railway Company.

E. H. BURGESS, B&O Building, Baltimore, Maryland, [fol. P] appearing for B&O Railroad.

HENRY E. FOLEY, 10 Post Office Square, Boston, Massachusetts, appearing for Port of Boston Commission, in support of equalizing rates.

J. S. CHARTRAND, 141 W. Jackson Boulevard, Chicago, Illinois, appearing for Board of Trade of the City of Chicago, in support of equalization.

A. C. WELSH, 26 Court Street, Brooklyn 1, New York, appearing for Brooklyn Chamber of Commerce.

PHILIP G. KRAEMER, Bridge Plaza, P.O. Box 69, Camden, New Jersey, appearing for Delaware River Port Authority.

CHARLES R. SEAL, 254 Granby St., Norfolk, Virginia, appearing for Virginia State Ports Authority, protestant.

WARREN H. WAGNER, 1031 Investment Building, Washington 5, D. C., appearing for Oscar Mayer & Co., Geo. A. Hormel & Co., Rath Packing Co., and John Morrell & Co.

WILLIAM T. TAYLOR, 1740 Suburban Station Building, Philadelphia, Pennsylvania, appearing for Pennsylvania Railroad Company.

EDWARD K. LAUX, 111 8th Avenue, New York 11, New York, appearing for Port of New York Authority.

MARTIN A. MEYER, JR., 1110 Investment Building, Washington 5, D. C., appearing for The Virginian Railway Company, protestant-respondent.

[fol. Q] SAMUEL H. WILLIAMS, 1100 Chamber of Commerce Building, 121 S. Broad St., Philadelphia, Pennsylvania, appearing for Chamber of Commerce of Greater Philadelphia.

STEPHEN TINGHITELLA, 99 Church Street, New York, appearing for Commerce & Industry Association of New York, Inc., petitioner for New York interests.

IGNATIUS C. GOODE, Commonwealth Pier 5, Boston 10, Massachusetts, appearing for Port of Boston Commission.

RICHARD COSTELLO, 140 Cedar Street, New York, New York, appearing for The Delaware, Lackawanna and Western Railroad Company, respondent.

WILLIAM C. PURNELL, 501 St. Paul Place, Baltimore, Maryland, Western Maryland Railway Company.

JOHN D. CLARK, 550 Munsey Building, appearing for various shippers.

MORRIS DUANE, 1617 Land Title Building, Philadephia, Pennsylvania, appearing for Delaware River Port Authority.

WILLIAM H. DAY, 80 Federal St., Boston, Massachusetts, appearing for Greater Boston Chamber of Commerce.

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[fol. R] COLLOQUY

Mr. Colgren: As the Examiner knows, it takes quite a while to process a waybill study. And it is that information which is now in process of being prepared. It involved the traffic, export and import traffic, originating and/or terminating in C.F.A. territory. Perhaps I should say Differential Territory. It starts August 1, 1955, and terminates July 31, 1956. In other words, it is a one-year study.

Mr. Burgess: I understand that would show the traffic that the New York lines—I take it, it is a study by those lines only, for the moment, at least—shows the traffic those lines handled to and from the North Atlantic ports; say, the New York Central shows its traffic to and from all the ports, and the same would be true of the other New York lines?

Mr. Colgren: That is right. Yes, sir.

Mr. Burgess: It seems to us, Mr. Examiner, that that is a very important study. The question that occurs to me about it is as to the periods being covered. That sort of study would show an absolute figure, but wouldn't show anything about trends over a period of time in the flow of this foreign commerce.

And the issues that are involved here, it seems to us that that sort of a traffic flow study would be of very great importance in the determination of the case. And I raise the question whether that shouldn't be expanded so as to cover a waybill study by all of the North Atlantic port lines [fol. S] over a period sufficiently representative to show trends of this traffic to and from the ports that are here involved.

Mr. LaRoe: And that would take about two years?

Mr. Burgess: Oh, no.

Mr. LaRoe: How long have you been working on yours, Mr. Colgren?

Mr. Colgren: Well, I barely received our last waybills. The study commenced August 1, 1955.

Mr. LaRoe: And you have been working on it all that time and haven't got it finished yet?

Mr. Colgren: Mr. LaRoe, it is a current study, month to month.

Mr. LaRoe: When did you start working on these waybills?

Mr. Colgren: Six months ago.

Mr. LaRoe: And it is not finished yet?

Mr. Colgren: That is right. It is a month-to-month study.

Mr. Burgess: We think a study of that sort could be completed in time to enable us to meet this schedule of hearing dates that you have suggested here. It is a big study. Exactly. It is a big study. But its importance, I think, is self-evident on one of the main issues in the case: How is this traffic flowing on the rates here involved, through one of these competing ports? It is one of the vital issues in the case. And how better can the facts be shown than by analysis of the actual waybills?

[fol. T] As everybody knows, the standard statistics of the Commission and the carriers don't break down foreign traffic so as to segregate to and from Differential Territory. The port district, of course, moves a lot of traffic, is another thing, and wouldn't show the correct picture.

It would seem to us that that study ought to embrace a five or six-year period, say since 1951. The Commission's rules on the destruction of records, I think, leave the waybills in our possession up to about six years. So if we ran a study of that sort from the first of 1951 through so far into 1956 as we could go, and did it on a uniform basis; that is, if all the lines serving the ports did it on a uniform basis, it seems to me you would have a very vital, very valuable piece of evidence here.

If we are undertaking to make such a study, and in order to have a comparable figure from the port of New York, we think—Norfolk, Baltimore and Philadelphia lines are undertaking to make such a study—

Exam. Boat: You mean you are working along somewhat the same lines, but the point as to the scope—

Mr. Burgess: We are working on a period that will reflect the trend of the flow. It will be the same type.

Exam. Boat: Is your study related solely to the flow of traffic through the ports you represent, that your lines serve?

Mr. Burgess: No, the B&O, for example, will show all of [fol. U] its foreign traffic through all the ports, the same with the Pennsylvania, the Reading, and—

Exam. Boat: But as to those lines, of course, you would have some New York and Philadelphia?

Mr. Burgess: That is right. Each line will analyze its waybills and show how the traffic it originated flowed through these ports, by commodities; that is, using the Commission's standard commodity designations.

Mr. Colgren: May I ask, is that a sample basis?

Mr. Burgess: No, it is an analysis of every waybill.

Mr. Colgren: For the five years?

Mr. Burgess: Yes.

Exam. Boat: Well, I am sure it has been helpful here, this disclosure we have had. I think it has been helpful to both sides to know what the nature of the preparation is by the other side.

Mr. Colgren: May I confer a moment?

Exam. Boat: Certainly.

Mr. Burgess: The study, also, of course, embraces and reflects all the traffic that moves under differential rates. We all know a lot of traffic to and from beyond territory moves on combinations, on the border points, with the differential rate, from C.F.A. in. In other words, what we want here is a traffic study which will show the flow of the traffic, the total traffic, under these rates that our friends in [fol. V] New York would wipe out.

Mr. LaRoe: Your study can be completed in time for these hearing dates?

Mr. Burgess: We think it can, and we are going to shoot for that objective.

Mr. LaRoe: I think it would be very helpful.

Mr. Burgess: Of course, it would have to embrace the New York lines in order to be significant.

Mr. LaRoe: That is right.

Mr. Burgess: And the Boston lines.

Exam. Boat: We will wait a moment until Mr. Colgren has finished his discussion there.

(Counsel confer.)

Mr. Burgess: To facilitate the study and still produce an accurate result, it seemed to us it might properly be confined to carload traffic, that kind of traffic that moved under a waybill showing it was moving as a carload. That means shipments having a minimum of not less than 10,000 pounds.

Exam. Boat: Is your part of the study confined to carload traffic; Mr. Colgren, as shipments of 10,000 pounds and over?

Mr. Colgren: It is my understanding it is. This brings up an interesting point, Mr. Examiner, that I am not prepared to speak on for all of the North Atlantic port lines. I wonder if we could have a short recess, so I could discuss this with my colleagues?

[fol. W] [File endorsement omitted]

[fol. X]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

PETITION OF PORT OF BOSTON COMMISSION FOR LEAVE TO INTERVENE—Filed September 17, 1956

Comes Now your petitioner, Port of Boston Commission, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceedings and that it desires leave to intervene in, and become a party

to, said proceedings. For grounds of the intervention herein sought your petitioner says as follows:

I

Port of Boston Commission is an agency of The Commonwealth of Massachusetts created and existing pursuant to the provisions of Sections 53 to 55, both inclusive, of Chap- [fol. Y] ter 6 of the General Laws of Massachusetts, as amended. Its principal office and mailing address is at Commonwealth Pier, Boston, Massachusetts.

Port of Boston Commission has administrative charge of the Port of Boston and, among other things, has the responsibility of promoting and protecting the trade and commerce of said Port and, in connection therewith, of endeavoring to foster and support the establishment and maintenance of fair and equitable transportation rates from, to and through said Port and to prevent the establishment and maintenance of transportation rates from, to and through said Port which are unfair or inequitable, or are prejudicial to said Port or injurious to its trade and commerce. Incident to said responsibility, Port of Boston Commission is authorized to initiate, or intervene or otherwise participate in, any rate proceeding, investigation and suspension proceeding, or any other hearing or proceeding before and by this Commission, if the subject matter of such proceeding or hearing in any way or manner concerns the Port of Boston, its trade or commerce.

II

By reason of its aforesaid responsibility, Port of Boston Commission has a direct and vital interest in the above-entitled proceedings, for upon the decision reached by the [fol. Z] Commission in said proceedings depend, in very large part, the future development and growth of the trade and commerce of the Port of Boston, and the prosperity of said Port, as well as the prosperity, to a considerable extent, of the City of Boston, The Commonwealth of Massachusetts and most of New England.

The trade and commerce of the Port of Boston, as well as that of the City of Boston, The Commonwealth of Massa-

chusetts and of most of New England, have long suffered, and are now suffering, grievous injury, and are at an unjustly and artificially depressed level, and their development and growth have been retarded, by reason of the existence and maintenance, as a part of the rail rate structure applicable to export and import traffic through the North Atlantic ports, of the so-called North Atlantic port differentials. Said port differentials unreasonably and unjustly provide lower rail rates upon such traffic from and to the ports of Baltimore and Philadelphia (and certain other ports taking the Baltimore rate base) than from and to the ports of Boston and New York. Said rail rate differentials have long resulted in, and are now causing, the diversion of large volumes of export and import traffic from the Port of Boston to the ports of Baltimore and Philadelphia, thus depriving the Port of Boston of its fair share of the total export and import traffic through the [fol. AA] North Atlantic Ports, all to its grievous injury. The Port of Boston is well qualified to handle said traffic by reason of its superior geographic location and its excellent physical and commercial facilities, it is legally entitled to a fair share thereof, and it would obtain such fair share but for the existence of said unfair and discriminatory rate differentials in favor of the ports of Baltimore and Philadelphia.

The vital interest of Port of Boston Commission in these proceedings derives from the fact that the question of the abolition or perpetuation of said port differentials and of the resulting serious harm hereinbefore briefly described, is squarely at issue herein. In these proceedings, the Commission will have to determine whether the abolition of said port differentials and the institution of export-import rail rates from and to Boston and New York on a parity with those from and to Baltimore, by the rail carriers serving the ports of Boston and/or New York, should be permitted by the Commission; and further, whether certain new rates published by the rail carriers serving Baltimore and Philadelphia, which rates undercut said parity rates and reinstitute, at a lower rate level, said unfair and discriminatory port differentials, must be set aside and ordered to be cancelled.

[fol. BB] III

Port of Boston Commission desires leave to intervene herein and become a party hereto for the purpose of presenting evidence and argument to the Commission in support of the abolition of said port differentials and in support of the parity rates proposed by the rail carriers serving Boston and/or New York, and in opposition to the new, lower rates published by the carriers serving Baltimore and/or Philadelphia, which rates would reinstitute, at a lower level, said port differentials. Port of Boston Commission, if granted leave to intervene, accordingly will seek an order vacating the suspension of said parity export-import rates from and to Boston and New York, and directing the cancellation of said new, lower differentially-based rates from and to Baltimore and Philadelphia (and certain other points taking the Baltimore rate base).

Wherefore your petitioner, Port of Boston Commission, prays leave to intervene and to become a party hereto with all the rights of a party, including the rights to receive notice of all pleadings, hearings and proceedings, to appear at any hearing herein and present testimony, to produce and cross-examine witnesses, and to be heard by counsel upon brief and oral argument, if oral argument [fol. CC] be had. The intervention herein sought, if granted, will not broaden the scope of the issues herein involved.

Respectfully submitted,

Henry E. Foley, 10 Post Office Square, Boston,
Counsel for Port of Boston Commission.

Hans F. Loeser, Foley, Hoag & Eliot, 10 Post Office Square, Boston, *Of Counsel.*

September 13, 1956.

Certificate of Service (omitted in printing).

[fol. DD]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

ORDER ALLOWING PORT OF BOSTON COMMISSION LEAVE TO INTERVENE—September 26, 1956

In the Matter of Petition for Leave to Intervene.

PRESENT: Richard F. Mitchell, Acting Chairman, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceedings and petition filed on behalf of Port of Boston Commission.

It is ordered, That Port of Boston Commission, be, and it is hereby, permitted to intervene and be treated as a party to these proceedings, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard on brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervener to introduce evidence which will unduly broaden the issues raised in the proceedings.

It is further ordered, That a copy of this order be served upon each of the parties to these proceedings.

Dated at Washington, D. C., this 26th day of September A. D., 1956.

By the Commission, Acting Chairman Mitchell.

Harold D. McCoy, Secretary.

[fol. FF]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

ORDER ASSIGNING THE TIME AND PLACE OF HEARINGS, ETC.

—October 18, 1956

In the Matters of (1) Assigning the Time and Place of Hearing, and (2) Prescribing Special Rules Governing Interchange of Prepared Material Prior to Hearing

Upon consideration of the record made at the prehearing conference in the above entitled proceedings held at Washington, D. C., on September 11, 1956, and the need for special rules of procedure to expedite hearing and disposition of the matters in issue, while affording opportunity to all interested parties to be fully heard;

It is ordered, That these proceedings be, and they are hereby assigned for hearing on February 18, 1957, at 9:30 o'clock a.m., United States Standard time, and for further hearing on April 16, 1957, at 9:30 a.m., United States Standard time, at the office of the Interstate Commerce Commission, Washington, D. C., before Examiner Marion L. Boat;

It is further ordered, That the following special rules shall be applicable herein:

1. *Interchange of prepared statements and documentary evidence in chief before hearings.*

(a) The parties shall prepare in writing the testimony in chief of their witnesses and serve upon all parties shown on the list later to be issued pursuant to Rule 2 hereof, copies thereof together with any exhibits they intend to present with such testimony.

(b) All such testimony and exhibits intended to be offered by respondents proposing equalization of the port rates and by all parties supporting the proposed equalization, shall be served by them on or before January 15, 1957.

[fol. FF] (c) All similar testimony and exhibits intended to be offered by respondents opposing equalization of the port rates and by all parties supporting their position, shall be served by them on or before March 15, 1957.

(d) A copy of all testimony and exhibits served pursuant to this rule shall also be mailed to Examiner Marion L. Boat, Interstate Commerce Commission, Washington, 25, D. C. No other copies thereof need be filed with the Commission prior to the hearing at which the material is tendered in evidence.

2. *Notification of desire to become a party and to be served with testimony and exhibits.*

Any person not a respondent or applicant in these proceedings, who has an interest in and desires to become a party to these proceedings shall, on or before December 3, 1956, give notice to the Secretary of the Interstate Commerce Commission of his intention to appear at and participate in the hearings therein, together with his address. If any party desires to be served with copies of testimony and exhibits, as provided in Rule 1 hereof, such party shall notify the Secretary on or before December 3, 1956, of such desire, indicating the number if more than one copy is desired. Thereafter, a list of parties upon whom such service should be made will be compiled, and a copy thereof served upon all parties.

3. *Participation limited.* Except as good cause therefor shall otherwise be shown at the hearings, and subject to such limitations as may be found justified by the presiding examiner with respect to participation by late intervention, the reception of evidence in these proceedings will be limited to respondents and those persons who have become parties as provided in Rule 2 hereof.

4. *General specifications.* Prepared statements shall conform to rule 15 of the General Rules of Practice in respect to style, mimeographing or printing, etc. Evidence offered should be prepared carefully with conciseness and clarity and so as to avoid extraneous, immaterial, and irrelevant matter, and undue cumulation of testimony upon any point. The statements should be factual in character. Argument should not be incorporated in the testimony. If not so limited the prepared statement may be excluded in whole or in part. Also the Commission on its own motion or on objection may exclude a statement or any portion thereof which is (a) not material or relevant to the questions presented in the proceeding, or (b) obviously incompetent.

5. *Verification: relief from cross examination and personal appearance.* There is no requirement that a prepared statement shall have an affidavit attached, but this does not preclude attaching an affidavit to the prepared statements. If the latter is done, the following, or its equivalent, should appear in the margin *on the top* of the first sheet of the statement:

> [fol. GG] This statement is verified. Unless written request for cross examination is received by affiant or his attorney not later than 10 days prior to the hearing at which such evidence otherwise would be offered, affiant desires that the statement be considered for incorporation in the record without his personal appearance as a witness.

A witness making such a request and thereafter receiving a demand for cross examination must personally report at the hearing, or his verified statement may not be received. If there is no demand for cross examination as above provided (indiscriminate demands for cross examination should be avoided), the privilege of cross examination will be deemed to be waived if the statement is verified and the witness making the statement has requested to be relieved from personal appearance as above provided. It will be presumed that a witness preparing an unsworn statement intends personally to appear at the hearing for cross ex-

amination and to be sworn at that time. An unsworn statement will be admitted only if the affiant is personally present at the hearing. The original signed and notarized copy of a verified statement should be retained by affiant or his counsel for incorporation of the statement into the record at the appropriate hearing.

6. *How admitted to the record.* To become a part of the record it is necessary for the witness, or some one qualified to represent him, formally to offer the prepared statement in evidence at the hearings; and unless good reason shall otherwise appear, the statement will be admitted as an exhibit.

7. *Materiality reserved.* A prepared statement received in evidence with or without objection as to its admissibility is subject to subsequent challenge as to the weight to be accorded to the facts in such statement.

8. *Witness examination.* The examination of a witness should be conducted in a manner so as to make it rapid, distinct, and as little annoying to the witness as is consistent with eliciting the facts, and to this end counsel on the same side of an issue should agree upon one person to examine a witness.

9. *Due dates defined.* All dates specified in these rules are the latest dates on which the parties in the performance of an act contemplated by these rules may make deposit in the mails, except (a) as to any date respecting which there is an express provision otherwise, and (b) any date therein provided for the filing of a petition with, or dispatch of notification to, the Commission shall be governed by the provisions of rule 4(b) of the General Rules of Practice, namely, receipt in the Commission and not the date of deposit in the mails shall be determinative.

It is further ordered, That changes in the dates for hearing and in the time schedules specified in this order may [fol. HH] be made, in accordance with the provision of the Commission's General Rules of Practice, by letter addressed to the Secretary of the Commission, and upon good cause shown such dates and time schedules may be changed, and

parties notified, by notice from the Secretary without formal order. Other requirements of the order may be changed for good cause shown upon order issued by the Chairman of the Commission to whom such matters are hereby assigned.

And it is further ordered, That in addition to service hereof upon all parties of record, a copy hereof also shall be filed with the Director, Division of the Federal Register.

By the Commission.

Harold D. McCoy, Secretary.

(Seal)

[fol. II]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and to North Atlantic Ports

NOTICE DATED DECEMBER 17, 1956 POSTPONING THE SCHEDULE OF HEARINGS

Counsel representing respondents in the above-entitled proceedings which serve the ports New York, N. Y., and north thereof has requested modification of the order of October 18, 1956, by postponement of the date of January 15, 1957, set for the service of testimony and exhibits by said respondents and parties supporting their proposal herein, until May 1, 1957, and that other dates named in that order be correspondingly postponed. This request is based upon difficulties encountered in obtaining basic and other data necessary for the preparation of studies to be presented in evidence. No objection has been made to the request.

Upon consideration of the matters submitted, the dates specified are changed as follows:

For serving testimony and exhibits by respondents supporting parties, under paragraph 1 (b) of said order, from January 15, 1957, to *April 22, 1957*.

For the hearing now assigned on February 18, 1957, to *May 20, 1957*.

For serving testimony and exhibits by respondents which serve the ports Philadelphia, Pa., and south thereof and parties supporting them, under paragraph 1 (c) of said order, from March 15, 1957, to *June 28, 1957*.

For the further hearing now assigned on April 16, 1957, to *July 22, 1957*.

It is expected, in view of the substantially increased time granted for preparation for the hearings, that the parties will adhere to this new schedule without further requests for postponement.

Harold D. McCoy, Secretary.

[fol. JJ]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and to North Atlantic Ports

NOTICE DATED FEBRUARY 25, 1957 POSTPONING THE SCHEDULE OF HEARINGS

Counsel representing respondents in the above-entitled proceedings which serve the ports New York, N. Y., and north thereof has requested further modification of the order of October 18, 1956, by postponement of the date of April 22, 1957, set for the service of testimony and exhibits by said respondents and parties supporting their proposal

herein, until June 21, 1957, and that other dates named in that order be correspondingly postponed. This request is based upon additional difficulties encountered in obtaining basic and other data necessary for the preparation of studies to be presented in evidence; and the necessary use of personnel in other pending proceedings. No objection has been made to the request.

Upon consideration of the matters submitted, the dates specified in the notice of December 17, 1956, are changed as follows:

(a) For serving testimony and exhibits by respondents and supporting parties, under paragraph 1 (b) of said order, from April 22, 1957 to *June 21, 1957.*

(b) For the hearing now assigned on May 20, 1957, to *July 22, 1957.*

(c) For serving testimony and exhibits by respondents which serve the ports Philadelphia, Pa., and south thereof and parties supporting them, under paragraph 1 (c) of said order, from June 28, 1957, to *August 27, 1957.*

(d) For the further hearing now assigned on July 22, 1957, to *September 23, 1957.*

Harold D. McCoy, Secretary.

[fol. KK]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and to North Atlantic Ports

NOTICE TO THE PARTIES—February 25, 1957

Listed below are the names and addresses of the persons who are to be furnished with copies of the prepared testi-

mony and exhibits to be interchanged or introduced in the above-entitled proceedings pursuant to the special rules of procedure entered therein by order of October 18, 1956, together with the number of copies, indicated in parentheses, to be sent each party:

(1) F. L. Ackerman
Director of Commerce
Norfolk Port Authority
500 Board of Trade Building
Norfolk 10, Va.

(1) William L. Baxter
Corporation Counsel
11 Beacon Street
Boston 8, Mass.

(1) Julian Y. Bedox
Transportation Bureau
Richmond Chamber of Commerce
15 N. 6th Street
Richmond 19, Va.

(3) Mr. Hewitt Biaett
General Solicitor
Chesapeake and Ohio Railway Co.
1500 First National Bank Bldg.
Richmond 10, Va.

(1) Mr. R. G. Bleakney, Jr. Attorney
Boston and Maine Railroad
150 Causeway St.
Boston, Mass.

(2) Mr. Richard R. Bongartz
General Attorney,
Pennsylvania R. R. Co.
1740 Broad Street
Station Bldg.
Philadelphia, Pa.

(1) Mr. Charles B. Bowling
Chief, Freight Rate Service Branch
Agricultural Marketing Service
Washington 25, D. C.

(1) Charles W. Bucy
Asst. General Counsel
U. S. Department of Agriculture
Washington 25, D. C.

(3) Mr. E. H. Burgess
Vice President and General Counsel
The Baltimore and Ohio Railroad Company
Baltimore 1, Md.

[fol. LL]

(2) Mr. Robert B. Claytor
Assistant General Counsel
Norfolk and Western Ry. Co.
Roanoke, Va.

(20) Mr. John H. Colgren
466 Lexington Ave.
New York 17, N. Y.

(1) Honorable Richardson Dilworth
Mayor
City of Philadelphia
Philadelphia, Pa.

(1) Curry & Dolan
Counsellors at Law
Southern Building
Washington, D. C.

(1) Mr. A. P. Donadio
General Attorney
The Baltimore and Ohio Railroad Company,
Baltimore 1, Md.

(1) Morris Duane, Esq.
Duane, Morris and Heckscher
1617 Land Title Building
Philadelphia 10, Pa.

(1) A. H. Elder
13 Ferncliff Terrace
Glen Ridge, N. J.

(1) H. M. Engdahl
Chairman
Southern Ports Foreign Freight Committee
Room 305—Union Station
516 West Jackson Blvd.
Chicago 6, Ill.

(2) Henry E. Foley
Foley, Hoag and Eliot
10 Post Office Square
Boston 9, Mass.

(1) Charles McD. Gillan
Transportation Director
Baltimore Association of Commerce
22 Light Street
Baltimore 2, Md.

(3) I. C. Goode
Traffic Manager
Port of Boston Commission
Commonwealth Pier No. 5
Boston 10, Mass.

(1) Honorable Alexander Greenfield
Deputy Attorney General
State of Delaware
Wilmington, Del.

(1) F. Clifford Hane
Assistant City Solicitor
Room 505 Court House
Baltimore 2, Md.

(1) Mr. C. J. Henry, Jr.
Assistant General Counsel
The Baltimore and Ohio Railroad Company
Baltimore 1, Md.

(2) Alfred W. Hesse
Assistant General Counsel
Reading Company
Philadelphia 7, Pa.

(2) Phillip G. Kraemer
Traffic Manager
Delaware River Port Authority
P. O. Box 69
Camden 1, N. J.

(1) C. J. Kucera
Transportation Commissioner
Toledo Board of Trade
408 Madison Avenue
Toledo 4, Ohio

(1) Mr. Jervis Langdon, Jr.
General Counsel,
The Baltimore and Ohio Railroad Company
Baltimore 1, Md.

(4) Wilbur LaRoe, Jr.,
LaRoe, Winn & Moerman
Investment Building
Washington 5, D. C.

(2) Donald Macleay
Macleay, Lynch & Macdonald
Commonwealth Building
1625 K St. N. W.
Washington 6, D. C.

(1) C. Philip Manger
President
Baltimore Chamber of Commerce
Commerce & Water Streets
Baltimore 2, Md.

(2) Mr. Martin A. Meyer, Jr.
The Virginian Railway Co.
1511 K Street N. W.
Washington 5, D. C.

(1) Warren Price, Jr., Esq.
1116 Investment Building
Washington 5, D. C.

[fol. MM]

(1) William C. Purnell, Esq.
Vice President and General Counsel
Western Maryland Railway Company
501 St. Paul Place
Baltimore 2, Md.

(1) Walter Raleigh
Executive Vice President
The New England Council for
Economic Development
Statler Building
Boston, Mass.

(1) Wesley A. Rogers
Waterways Freight Bureau
28 E. Jackson Blvd.
Chicago 4, Ill.

(1) William C. Schafer
Freight Traffic Manager
Western Maryland Railway Company
501 St. Paul Place
Baltimore 2, Md.

(1) Charles R. Seal
General Counsel
Virginia State Port Authority
254 Granby Street
Norfolk 10, Va.

(1) H. L. Shaffer
Dubuque Packing Co.
701-799 East 16th St.
Dubuque, Iowa

(1) G. Gary Sousa
Assistant Corporation Counsel
City of New York
Law Department
Municipal Building
New York 7, N. Y.

(3) Edward G. Sweeney
General Counsel
General Services Administration
18th & F Streets, N. W.
Washington 25, D. C.

(2) William J. Taylor
Assistant General Counsel
Pennsylvania Railroad Co.
1740 Broad Street Station Bldg.
Philadelphia 4, Pa.

(2) Warren H. Wagner
Attorney at Law
Investment Building
Washington 5, D. C.

(1) Samuel H. Williams
Director,
Chamber of Commerce of Greater Philadelphia
Chamber of Commerce Bldg.
121 South Broad Street
Philadelphia 7, Pa.

(1) Erle J. Zoll, Jr.
General Commerce Attorney
Illinois Central Railroad Company
135 E. Eleventh Place
Chicago 5, Ill.

By the Commission

Harold D. McCoy, Secretary.

[fol. NN]

BEFORE THE INTERSTATE COMMERCE COMMISSION
WASHINGTON 25, D. C.

Investigation and Suspension Docket No. 6615
Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204
Import and Export Rates From and to North Atlantic Ports

NOTICE TO PERSONS SUBMITTING EVIDENCE—March 26, 1957

The names of the following persons should be added to those listed in the notice of February 25, 1957, who are to be furnished with copies of prepared testimony and exhibits to be interchanged or introduced in the above-entitled proceedings. The figure in parenthesis is the number of copies to be sent to each of these persons:

(1) Mr. A. C. Welsh
Brooklyn Chamber of Commerce
25 Court St.,
Brooklyn 1, N. Y.

(1) Mr. Thomas J. Newell,
Traffic Manager
Board of Harbor Commissioner
P. O. Box 1191
Wilmington, Del.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 00]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

NOTICE DATED JULY 8, 1957 POSTPONING SCHEDULE OF HEARINGS

Counsel representing respondents in the above-entitled proceedings have requested further modification of the order of October 18, 1956, by postponement of the dates of the hearings specified in the notice of February 25, 1957, and of the date for the service of testimony and exhibits of the parties indicated in sub-paragraph (c) of said notice. These requests are made upon representation that additional time is required to prepare testimony specified in said subparagraph and otherwise to complete preparation for the hearings. Counsel for all respondents have agreed to such postponement and to the common date for the hearing.

Upon consideration of the matters submitted, the dates specified in the notice of February 25, 1957, are changed as follows:

(b) The hearing now set for July 22, 1957, is cancelled.

(c) For serving testimony and exhibits by respondents which serve the ports Philadelphia, Pa., and south thereof and parties supporting them, under paragraph 1(c) of said order, from August 27, 1957, to *September 23, 1957*.

(d) For the hearings now assigned on July 22, 1957, and September 23, 1957, a hearing on *October 28, 1957*, for all parties.

Harold D. McCoy, Secretary.

[fol. PP]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

NOTICE DATED AUGUST 23, 1957 POSTPONING THE SCHEDULE OF HEARINGS

Counsel for port agencies and commercial organizations which represent the interests of the ports of Philadelphia, Baltimore and Hampton Roads have requested postponement of the dates for serving testimony and exhibits of the parties indicated in subparagraph (c) and of the date of hearing schedules in subparagraph (d) of the notice of July 8, 1957. These requests are based chiefly upon representations that additional time is needed for analysis of evidence submitted by opposing parties and completion of traffic and other studies by rail carriers serving these ports. Opposing counsel have been advised of this request and have indicated no objection.

Upon consideration of the matters submitted, the dates specified in the notice of July 8, 1957, are changed as follows:

(c) For serving testimony and exhibits by respondents which serve the ports Philadelphia, Pa., and south thereof and parties supporting them, under paragraph 1(c) of said order, from September 23, 1957, to *October 18, 1957*.

(d) For the hearing now assigned on October 28, 1957, for all parties, to *November 18, 1957*, at 9:30 o'clock

a. m. United States Standard Time at the offices of the Interstate Commerce Commission, Washington, D. C., before Marion L. Boat.

Harold D. McCoy, Secretary.

[fol. QQ]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

NOTICE DATED NOVEMBER 7, 1957 POSTPONING THE SCHEDULE OF HEARINGS

Counsel for respondents in the above-entitled proceedings which serve the ports New York, N. Y., and north thereof and port interests supporting them, have requested postponement of the date of hearing from November 18, 1957, as specified in the notice of August 23, 1957, for the purpose of affording them additional time for study of opposing parties voluminous evidence and preparation for cross examination thereon. Counsel for the latter who are advised of such request have indicated they have no objection to such postponement.

Upon consideration of the matters submitted, the hearing in these proceedings assigned on November 18, 1957, is postponed to *February 17, 1958*, at 9:30 o'clock a.m., United States Standard Time, at the offices of the Interstate Commerce Commission, Washington, D. C.

Counsel for each of the principal groups of parties, and any other parties to the extent that it is practicable to do

so, are requested to advise the Commission by *January 15, 1958*, with copies to all parties:

(a) The order in which their statements thus far submitted, together with supporting documentary material which are to be presented as direct evidence, will be offered for the record.

(b) (1) The names of witnesses whose presence is desired for the purpose of cross examination, and (2) The amount of time estimated to be necessary for such examination of each witness.

[fol. RR] A notice to all parties will be issued promptly after January 15, 1958, containing the information requested in paragraph (b) (1) and (b) (2) and indicating the order in which the statements will be offered in evidence.

Harold D. McCoy, Secretary.

[fol. SS]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. & S. Docket No. 6615

Equalization of Rates at North Atlantic Ports

F. S. A. No. 32204

Import and Export Rates From and To North Atlantic Ports

PETITION OF THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL. FOR INVESTIGATION OF RAIL TERMINAL COSTS AT THE PORT OF NEW YORK—Filed January 15, 1958

The Baltimore and Ohio Railroad Company, Canton Railroad Company, The Chesapeake and Ohio Railway Company, The Pennsylvania Railroad Company, Reading Company, Norfolk and Western Railway Company and Western Maryland Railway Company hereby petition the Commis-

sion to institute an investigation into the costs of rail transportation of import and export traffic from and to the port of New York, particularly with relation to the terminal costs at New York of the railroads proposing equalization.

I.

In this proceeding the principal issue before the Commission concerns relationships in rail rates on export-import traffic between the North Atlantic ports and so-called differential territory (generally west of a line drawn [fol. TT] between Buffalo, New York, and Pittsburgh, Pennsylvania). On the one side are the New York and Boston port interests, together with certain railroads serving those ports, which are in favor of rate equalization. On the other side are the Philadelphia, Baltimore, and Hampton Roads port interests, together with the railroads serving those ports, which are opposed to equalization.

Under special rules of procedure adopted by the Commission by its order of October 18, 1956, there has already been distributed the affirmative evidence of the parties in favor of equalization. This was accomplished June 24, 1957. Similarly, the affirmative evidence of the parties opposed to equalization (including the petitioners herein) has been distributed. This was done October 18, 1957.

The initial hearing in this proceeding is now scheduled for February 17, 1958, before Examiner Boat.

There is included among the exhibits to be offered by petitioners (the railroads opposed to equalization) at the hearing on February 17th a study of the estimated costs of transporting by rail typical commodities moving in export and import commerce between differential territory and the North Atlantic ports. The costs set forth in this study, aside from making use of the Form A figures of the cost section of the Commission for the line-haul transportation and the terminal service which is performed within [fol. UU] differential territory, include separately computed terminal costs for each of the following railroads covering services provided on export and import traffic at each of the following ports:

Port	*Separate Terminal Cost Studies*
New York	Baltimore & Ohio R. Co. Central R. Co. of N. J. Pennsylvania R. Co.
Philadelphia	Baltimore & Ohio R. Co. Pennsylvania R. Co. Reading Co.
Baltimore	Baltimore & Ohio R. Co. Canton R. Co. Pennsylvania R. Co. Western Maryland Ry. Co.
Hampton Roads	Chesapeake & Ohio Ry. Co. Norfolk & Western Ry. Co.

In the final results set forth in the study these separately computed terminal cost figures are weighted in accordance with each petitioner's share of the export-import traffic, and composite cost figures are arrived at for each port.

No cost evidence is included in the affirmative case of the parties favoring equalization, and it is understood that no special cost studies will be undertaken by them.

II.

Pursuant to request, copies of the underlying work sheets for these special cost studies were delivered to counsel for the New York Central Railroad Company on November 4, [fol. VV] 1957. Copies of the same work sheets were sent to the Examiner with covering letter of the same date.

III.

According to the evidence set forth in petitioners' study, the present rates on export-import traffic between differential territory and the port of New York are, in the majority of instances, grossly non-compensatory. This result follows a comparison of the calculated transportation costs with the revenues arising under the present rail rates on

over 100 individual but typical commodity movements in export and import commerce passing through the port of New York. The losses exist even though the costs used in the study are partial costs and do not include any allowance for income taxes, or for such integral parts of constant expenses as passenger and less carload deficits.

Pages 3 and 4 of Exhibit JLH-1 accompanying the testimony of Witness J. L. Heywood contains 57 examples of carload shipments of various import commodities from the port of New York to destinations covering the area of differential territory. In 47 of the 57 examples, the ratio of costs to revenues ranges from 105.0 to 158.3 per cent, with per car losses ranging as high as $254.40.

Pages 3 and 4 of Exhibit JLH-2 of the same witness contains similar information with respect to export traffic from differential territory to New York. In 42 of the 57 instances there shown, the ratio of costs to revenues ranges [fol. WW] from 100.2 to 241.2 per cent, with per car losses ranging up to $509.34.

IV.

When these losses are related to that part of the export-import traffic handled by all the railroads at New York which moves to and from differential territory, the aggregate annual loss (on the basis of partial costs only) would appear to approximate $13,000,000 per year under *present* rates. Applied to all export-import traffic handled by the railroads at New York, the aggregate annual loss (again on the basis of partial costs) would appear to approximate $30,000,000 per year under *present* rates. Additional losses (beyond the scope of this proceeding) probably occur in connection with domestic freight receiving comparable services at New York.

V.

The losses referred to in the foregoing paragraph would be increased if, as sought by the interests favoring equalization, the rail rates on export-import traffic to and from New York were reduced to the level now obtaining at the port of Baltimore.

VI.

Whether or not the suspended rates are compensatory is a fundamental and primary issue in this proceeding.

[fol. XX] Wherefore your petitioners pray that the Commission itself institute as a part of these proceedings an investigation into the costs of rail transportation of export and import traffic to and from the port of New York, particularly with relation to the terminal costs at New York of the railroads proposing equalization. This would insure that the costs of all of the lines serving New York would be before the Commission when deciding the fundamental and primary issue of whether the suspended rates are reasonably compensatory.

Respectfully submitted,

Richard R. Bongartz, Robert B. Claytor, Rene J. Gunning, John W. Hanifin, Charles J. Henry, Jr., Alfred W. Hesse, Jr., John Henry Lewin, William C. Purnell, William P. Quinn, John S. Shannon, William J. Taylor, Jervis Langdon, Jr., 301 B. & O. Building, Baltimore 1, Maryland, January 15, 1958.

[fol. YY] Certificate of Service (omitted in printing).

[fol. ZZ]

Before the Interstate Commerce Commission

January 21, 1958

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

Notice Dated January 21, 1958 of List of Witnesses, etc.

The principal groups of parties have suggested that the statements and supporting documentary matter of the wit-

nesses listed, constituting their direct evidence in these proceedings, be presented in the following order at the hearing beginning on February 17, 1958. That order will be adhered to to the extent practicable.

The New York-Boston Railroads and Supporting Interests.

Witness		Time estimated for cross-examination (minutes)
A. E. Baylis, V.P.	NYC RR Co.	60
A. J. Crookshank, Dir. of Rates	NYC RR Co.	30
E. C. Hallberg, AVP —Traffic	Erie RR	30
C. F. Heard, GTM	B&M RR	0
R. H. Harris, AGM —Marine Terminals	B&M RR	0
A. F. Lane, FTM	B&M RR	0
E. C. Ennis, FFTM	DL&W RR Co.	30
A. K. Thomas, FFTM (Vice W. H. Lancton, deceased)	LV RR Co.	30
[fol. AAA]		
G. W. Flanigan, AFTM	NYNH&H RR Co.	30
E. E. Allstatter, TM	Sorg Paper Co.	0
F. W. Bennett, AVP and GTM	Sharon Steel Corp.	0
W. F. Conlin, TM	Shenango Furnace Co.	0
R. B. O'Donnell, TM	Armco International Corp.	0
F. C. Tighe, TM	Union Carbide Corp.	0
R. H. Gilman, Director Port Development Dept.	Port of New York Authority	30

Witness		Time estimated for cross-examination (minutes)
J. Gilbert, Trade Economist	Port of New York Authority	30
E. K. Laux, TM	Port of New York Authority	60
J. Patterson, Export TM	Allis-Chalmers Mfg. Co.	0
E. A. Senghas, AGTM	National Biscuit Co.	0
H. G. Seymour, President	N.Y. Foreign Freight Forwarders & Brokers Inc.	0
R. Hamlin, ATM	Union Metal Mfg. Co.	0
C. P. Kelsey, Export Manager	Weatherhead Co.	0
C. D. Mawer, Jr., Asst. Secretary and Import-Export TM	Mawer-Golden-Annis, Inc.	0
R. C. Sell, TM	Koehring Co.	0
M. A. York, TM	E. W. Bliss & Co.	0
J. F. O'Halloran, Ex VP	Wiggin Terminals, Inc.	0
J. J. Halloran, Mgr., Maritime Asso.	Greater Boston Chamber of Commerce	0
[fol. BBB] B. J. Brooks, Trans. Spec.	On behalf of Port of Boston Commission	0
W. H. Day, Mgr., Trans. Dept.	Greater Boston Chamber of Commerce	30
Dr. G. H. Ellis, Dir. of Research	Federal Reserve Bank, Boston	0

Witness		Time estimated for cross-examination (minutes)
D. P. Locklin, Professor	University of Illinois	30
R. F. Wagner, Mayor	City of New York	0
V. A. G. O'Connor, Commissioner, Marine & Aviation	City of New York	0
J. L. Pease, Asst. Chief, Freight Rate Service Branch	U.S. Dept of Agriculture	30
J. K. Cowling, Director, Charter and Routing Division	General Services Admin.	30
D. J. Speert	For Brooklyn Chamber of Commerce, Inc.	30
L. H. Dalzell, Chairman of the Board of Dalzell Towing Co., Inc.	For the Chamber of Commerce of the State of New York	0
B. A. Springrose, GTM	Cargill, Inc.	0
J. S. Chartrand, Mgr., Trans. Dept.	Board of Trade of the City of Chicago	0
R. L. Beal, GTM	Farmers Grain Dealers Asso. of Iowa	0
V. M. Conley, Mgr., Trans. Dept.	Norris Grain Co.	0
W. P. Conrad, Jr., TM	Rice Grain Corp.	0
T. J. Crowe, VP & TM	Illinois Grain Corp.	0

Witness	Time estimated for cross-examination (minutes)
[fol. CCC]	
F. W. Dunham, Jr., Gen. Mgr., Albany Port District Commission	30
Maine Central Railroad Company	
R. C. Merrow, FTM, Maine Central RR Co.	*15
A. E. Langlois, Jr. Maine Port Authority	0
The Philadelphia-Baltimore-Hampton Roads Railroads and Supporting Interests	
M. L. Mollman, GFA B&O RR	*60
K. G. Growe, Asst. Mgr.-Freight Rates, PRR	*45
F. H. Clark, Spec. Asst. to VP (retired) PRR	45
J. L. Heywood, Asst. Comptroller, PRR	*30
F. S. Baird, VP Traffic, N&WR Co.	0
C. F. Keeley, FTM, N&W RR Co.	*20
T. Jefferson, Jr., FTM C&O R Co.	20
J. Schmuck, Jr., Asst. FTM, Virginian Ry. Co.	0
G. Roach, Asst. GM—World Commerce Dept. C&O R Co.	*20
W. C. Sawyer, FFTM, N&W R Co.	20
R. E. Petterson, Compt., N&WR Co.	*
W. M. Warren, Asst. G. Auditor, C&O R Co.	*
A. J. Kneesy, TM, Brown & Williamson Tobacco Corp.	*10
J. H. Stratton, Consulting Engineer, Tippets-Abbett-McCarthy-Stratton	30
W. S. Hamil, Dir, Business Research Dept. Baltimore Assn. of Commerce	*60

Witness	Time estimated for cross-examination (minutes)
J. L. Stanton, Exec. Dir., Maryland Port Authority	•
[fol. DDD]	
J. W. Davis, Sec-Treas. and Director, Maryland Port Authority	0
F. H. N. Heemann, Transportation Dept., Maryland Port Authority	0
H. K. Hildebrand, Maritime Statistician Maryland Port Authority	15
G. M. Footner, Partner, Footner and Co.	•
S. Shapiro, Pres., Samuel Shapiro & Co.	•10
W. V. Connor, Prop., John S. Connor	•
C. A. Masson, Pres., Baltimore Custom House Brokers and Frt. Forwarders Assn.	•
N. M. Wittkamp, Pres., Inland Shipping Co.	•
A. B. Summers, TM, The Everedy Co.	0
V. F. Stine, Pres., Pangborn Corp.	0
J. V. Jamison, 3rd, Pres., Jamieson Cold Storage Door Co.	0
R. M. Pilson, TM, Anchor Post Products, Inc.	0
C. G. Kappel, TM, National Plastic Products Co.	•15
E. A. Seidle, retired	•
C. E. Childe, Transp. Consultant, Maryland Port Authority	•20
C. R. Seal, Dir., Transportation Department Maryland Port Authority	•
C. N. Bean, Mgr. Research & Promotion Bureau, Delaware River Port Authority	0
P. G. Graemer, TM, Delaware River Port Authority	0

Witness	Time estimated for cross-examination (minutes)
[Vol. EEE]	
L. A. Drake, Ex. Dir., Economics and Taxation Council, Chamber of Commerce of Greater Philadelphia	*
Richardson Dilworth, Mayor, City of Philadelphia	0
J. D. Craven, Attorney General, State of Delaware	0
J. F. Curren, Asst. TM, Delaware State Ch. of Commerce, Inc.	0
D. S. Gendell, Dir. of Planning, Virginia State Port Authority	0
A. S. Campbell, Research Economist, Virginia State Port Authority	0
B. P. Wakefield, Dir., Bureau of Transportation, Virginia State Port Authority	0
G. E. Miller, Dir., Bureau of Comm., Virginia State Port Authority	*15
H. A. Keitz, Pres., Export-Import Assn. of Virginia	*
M. M. Mora, GM, Norfolk Port Authority	*45
J. Y. Bedox, Mgr. Transportation Bureau, Richmond Chamber of Commerce	0
O. M. Shuler, Asst. VP and GTM, Oscar Mayer & Co.	0

Note:

* Counsel F. W. Denniston, GSA, has also requested the presence of witnesses whose names are followed by an asterisk, but he has not indicated an estimate of time required. Any such time is in addition to that stated by other parties and recorded above.

[fol. GGG]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. & S. Docket No. 6615

Equalization of Rates at North Atlantic Ports

F. S. A. No. 32204

Import and Export Rates From and To North Atlantic Ports

REPLY OF BOSTON AND MAINE R.R., ET AL., TO PETITION FOR INVESTIGATION OF RAIL TERMINAL COSTS AT THE PORT OF NEW YORK—Filed February 3, 1958

Come now the railroads[1] proposing equalization of the rail rates on import and export traffic to and from so-called differential territory[2] and the North Atlantic ports and in reply to the petition of the railroads[3] in this proceeding [fol. HHHH] which oppose such equalization respectfully state:

I

The petitioners state that the "principal" issue before the Commission concerns the relationship of rail rates on

[1] Boston and Maine Railroad; The Delaware and Hudson Railroad Corporation; The Delaware, Lackawanna and Western Railroad Company; Erie Railroad Company; Lehigh Valley Railroad Company; The New York Central Railroad Company; The New York, New Haven and Hartford Railroad Company; and New York, Susquehanna and Western Railroad Company.

[2] Generally west of a line drawn between Buffalo, New York, and Pittsburgh, Pennsylvania, and extending to the Mississippi River.

[3] The Baltimore and Ohio Railroad Company; Canton Railroad Company; The Chesapeake and Ohio Railway Company; The Pennsylvania Railroad; Reading Company; Norfolk and Western Railway Company; and Western Maryland Railway Company.

export-import traffic between the North Atlantic ports and differential territory. Replicants' position is that this is not only the "principal" but the sole issue in this proceeding. The single issue is whether the assertion by replicant railroads of the right to compete for export-import traffic on an equal basis with other railroads serving the same common territory but different ports is consistent with the Interstate Commerce Act, the National Transportation Policy and Congressional policy toward the continuing strength of our national production and all port areas.

The equal rates proposed and currently in issue raise only the question of *relationship* and do not require investigation of the *level* of the rates to be charged to and from the different ports. During the course of this proceeding replicants will show that the proposed rate relationship is proper and otherwise lawful. Whether or not the rate level is appropriate is a separate and distinct question from that in issue and must not be permitted to obscure and obfuscate the Commission's determination of the basic and only question at issue as above stated.

[fol. III]

II

Petitioners have apparently adopted a course of attempting to divert the Commission from the single issue in this case. This tactical move should be at once recognized for what it is and dealt with accordingly. The port differentials were not established on the basis of handling costs of the carriers at the ports, and this proposed investigation is therefore entirely foreign to the real issue in this proceeding. Furthermore, an investigation into the costs to the extent proposed by petitioners and the level of rates that should be established would require a great deal of time during which petitioners would maintain their present rate advantages. The Commission should not, in this proceeding, be led into a course of inquiry which can only extend the time that replicant railroads must suffer the continuing and increasing loss of traffic through the continuance of the differentials advantaging the petitioning railroads, which present competitive conditions do not justify.

III

It is axiomatic that railroad unit costs depend on volume of traffic. Particularly is this true of export-import traffic which requires port facilities of the fixed-cost type, peculiarly vulnerable to wide variations in unit cost computations dependent upon volume. And, in this connection, it must be kept in mind that, whereas the railroads serving [fol. JJJ] the individual southern tier of ports are few in number, the export-import traffic through New York Harbor is divided among more than a dozen railroads, each of which has necessarily provided facilities for handling the water-borne traffic of its customers. Considering that the railroads serving New York have shown a relative decline over the past years in their volume of export-import traffic, unit costs will thereby have risen relatively to the unit costs of railroads handling similar traffic at ports which have shown a relative increase in traffic. But this brings us to the question of whether or not the railroads serving the ports showing a decline in traffic have a right to better their cost and earnings positions by reducing their unit costs through increased volume. And this is the precise and only question before the Commission, i.e., whether an arbitrary differential, advantaging the railroads serving the ports to the south of New York, should be permitted to continue, in the face of the declining position of the railroads serving the ports, New York and north, which have demonstrated the need for equal rates in order to participate fairly in the transportation of foreign traffic.

Unless the Commission is prepared to embark on an entirely novel course in establishing rates for competing ports which will require investigation into the level of [fol. KKK] rates and their relationships among all ports in the United States, it must confine itself to the single issue presented by the railroads serving the northern tier of North Atlantic ports.

The accuracy and propriety of the figures, compiled and used by petitioners, will be disproven in this proceeding. Certainly, these figures do not afford any basis for the

Commission to embark upon an investigation of the nature proposed by petitioners.

IV

It is clear to the Commission, of course, that, if the request of petitioners were granted, it would lead to a tremendous and time-consuming study which would necessarily embrace each and every North Atlantic Port. It is assumed that, if the Commission deemed the sought information pertinent at New York, it would necessarily find it just as important and necessary at the ports served by competing railroads. Indeed, if the request of petitioners was granted by the Commission without broadening it to include all the North Atlantic Ports, replicants would necessarily, as a matter of right and as a prerequisite to complete adjudication on the course that the Commission would then be following, demand such a broadening.

Naturally, a halt to the proceedings in I. & S. Docket No. 6615, while the Commission pursued its inquiry of costs at the ports, would be welcomed by petitioners. But, during [fol. LLL] the delay, the disadvantaged northern port railroads would continue to suffer losses and declining traffic while their southerly counterparts continued to gain at their expense.

V

A determination of the sole issue in this proceeding, dominated primarily by considerations of present-day costs at the various ports, in effect, would freeze the ports to the traffic presently handled, or worse, place presently artificially advantaged ports in better position to take further advantage of volume shipments to the increasing detriment of their disadvantaged competitors.

The influence of traffic volume upon costs cannot be overstated. If the purpose of the requested cost study is simply to show that the New York port line rates are not compensatory, then all petitioners have to do is to delay this case by an extensive cost investigation sufficiently to permit the present decline in traffic volume to affect the costs enough to produce the desired result. For example, in the year 1957 replicant New York Central had a net loss

from railroad operations, including fixed charges, of more than $24 million, so that in that year the New York Central's entire operations were handled on a non-compensatory basis. But it would be absurd to argue from this that the Central should not be permitted to reduce rates to [fol. MMM] increase volume and thereby reduce unit costs merely because its existing traffic volume had declined to such a level that its operation was non-compensatory. To accept this philosophy would be to condemn roads like the Central to perpetual insolvency.

It is doubtful, however, whether this is the real objective of the petition. If it is, then there is no need to suffer the delay, the cost, and the drain on manpower that will be involved in furnishing the information sought by petitioners, because petitioners have already submitted a voluminous cost study purporting to prove that the northern tier port line rates are "grossly non-compensatory".

Replicants are prepared to prove that petitioners' cost study is completely in error as to this conclusion. Apparently, the southern tier port lines have lost confidence in their own study and are unwilling to take the chance of allowing it to stand or fall on the basis of the evidence already presented and the cross-examination to come. They now come to the Commission asking for help in the prosecution of their case.

Replicants not only do not deny but contend that, by reason of their reduced volume of traffic and the increased volume at the southern tier ports, replicants' unit costs at the port of New York are higher than the unit costs of the petitioning roads at the ports south of New York. The adverse effect of the artificial differentials upon replicants' [fol. NNN] traffic volume and the effect of their reduced volume upon their unit costs is the decisive reason why the northern tier lines must equalize the export-import rates. Having reaped the reward of lower unit costs from the artificial differentials, the southern tier port lines would now seek to clothe themselves with virtue and ask the Commission to freeze existing traffic volumes on the basis of existing costs. On this basis they would, with one stroke, eliminate any future competition from the northern tier

port lines and, at the same time, forever prevent these lines from ever looking to increased traffic volume to relieve their increasing unit costs.

Truly, as Commissioner Hall said in *Interchangeable Mileage Ticket Investigation*, 77 I.C.C. 200 at 214: "Special privilege dies hard and the craving for it never dies."

Thus, it would appear that the southern tier lines seek to support their special privilege by an unsound application of costs to rates without any showing that costs in the past or present were ever related to the differential which they now seek to preserve.

History establishes the lack of merit inherent in the instant petition, because actions always speak louder than words. At the time when the railroads at the Port of New York handled the largest proportion of the traffic, the southern tier lines claimed a differential on the grounds [fol. 000] that it was necessary to enable them to equalize differing water rates to the ports, more frequent sailings to and from the Port of New York, greater number of banks and credit facilities at New York, etc., and thus was required if the southern tier lines were to obtain their "share of traffic". Unquestionably, the larger volume of foreign traffic that then flowed through the Port of New York gave the New York lines a substantial cost advantage over the lines serving the southern tier ports. A search of the cases in which the differentials were under consideration will show a noticeable absence of emphasis on costs.

The principal contention in all of the prior port cases lay upon equalizing competitive advantages among the various competing lines, and the differentials were established precisely for that purpose. Now that conditions have changed and the differentials have worked their designed purpose to a point where they are now producing a wholly unwarranted artificial preference and advantage to the southern tier port lines, these lines now seek to preserve their preference by asking the Commission to look at the static situation as it now prevails and to justify the differentials on the basis of unit costs. This not only is grossly unfair to the lines serving the Port of New York but is a basic attack upon the fundamental concept of

differentials. Thus, the petition presents the Commission [fol. PPP] squarely with the issue of whether this is a rate relationship case or whether it is now to be turned into an investigation of the general level of import-export rates.

Conclusion

Wherefore, replicants pray that for the reasons set forth above, the Commission deny the petition.

Respectfully submitted,

Robert G. Bleakney, Jr., John T. Clark, John H. Colgren, Richard E. Costello, William Q. Keenan, John F. Reilly, Malcolm R. Warnock.

[fol. QQQ] Certificate of Service (omitted in printing).

[fol. RRR]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6615

Equalization of Rates at North Atlantic Ports

Fourth Section Application No. 32204

Import and Export Rates From and To North Atlantic Ports

ORDER DENYING PETITION OF BALTIMORE AND OHIO R.R. CO., ET AL.—February 25, 1958

The Commission having under consideration (1) petition dated January 15, 1958, filed by the Baltimore & Ohio Railroad Company and six other eastern railroads, requesting the Commission to institute as a part of the above-entitled proceedings an investigation into the costs of rail transportation of export and import traffic to and from the

port of New York, particularly with relation to the terminal costs of the railroads proposing equalization, and (2) reply of the New York Central and seven other eastern railroads, dated January 31, 1958;

And it appearing, That the petition for investigation is presented almost seven months after respondents proposing equalization of the port rates submitted their evidence in chief in accordance with the order of October 18, 1956, as amended; that to grant the petition would entail a costly and time consuming delay in these proceedings, which have already been pending 18 months; that the burden of establishing the lawfulness of the proposed rates in these proceedings rests upon respondents; and that the circumstances and the matters submitted in the petition do not warrant institution by the Commission of the requested investigation:

[fol. SSS] *It is ordered,* That the said petition be, and it is hereby, denied.

By the Commission.

Harold D. McCoy, Secretary.

[fol. A1] Secretary's Certificate to transcript (omitted in printing).

[fol. 1]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I & S Docket No. 6615

In the Matter of:

EQUALIZATION OF RATES AT NORTH ATLANTIC PORTS

FSA Docket No. 32204

In the Matter of:

IMPORT AND EXPORT RATES FROM AND TO NORTH ATLANTIC PORTS

Transcript of Hearing—Monday, February 17, 1958

Met, pursuant to notice, at 10:00 a.m.

Before: Marion L. Boat, Examiner.

APPEARANCES:

John H. Colgren, 466 Lexington Avenue, New York 17, N. Y., appearing for Railroads Seeking Equalization, appearing for the Respondent.

Richard E. Costello, 140 Cedar Street, New York 6, N. Y., appearing for Railroad Respondents.

John F. Reilly, 230 Park Avenue, New York 17, N. Y., appearing for The Delaware and Hudson Railroad Corporation, Respondent.

Malcolm R. Warnock, 143 Liberty Street, New York 6, N. Y., appearing for Respondents.

[fol. 2] J. T. Clark, 1336 Midland Building, Cleveland 15, Ohio, appearing for Respondents proposing equalization.

Bernard Hulkower, 466 Lexington Avenue, New York, N. Y., appearing for Respondents.

Scott W. Scully, 232 St. John Street, Portland, Maine, appearing for Maine Central Railroad Company, Respondent.

Neal Holland and Robert G. Bleakney, Jr., 150 Causeway Street, Boston 14, Massachusetts, appearing for Respondent, Boston and Maine Railroad.

William Q Keenan, 54 Meadow Street, New Haven, Connecticut, appearing for New Haven Railroad, Respondent.

Arthur L Winn, Jr., Samuel H. Moerman and Walter J. Myskowski, 743 Investment Building, Washington, D. C., appearing for The Port of New York Authority, In support of Respondents, and others, as follows:

Chamber of Commerce of the City of Newark, in support of Respondents.

New York Board of Trade, in support of Respondents.

Shippers' Conference of Greater New York, Inc., in support of Respondents.

The Maritime Association of the Port of New York, in support of Respondents.

Queensboro Chamber of Commerce, in support of Respondents.

New Jersey Industrial Traffic League, Inc., in support of Respondents.

[fol. 3] West Side Association of Commerce in the City of New York, in support of Respondents.

The Bronx Board of Trade, in support of Respondents.

The New York Shipping Association, Inc., in support of Respondents.

Belleville Manufacturers' Association, in support of Respondents.

Bergen County Chamber of Commerce, in support of Respondents.

Bloomfield Chamber of Commerce, in support of Respondents.

Chamber of Commerce of Eastern Union County, in support of Respondents.

Chamber of Commerce, Garfield, New Jersey, in support of Respondents.

Chamber of Commerce, Irvington, New Jersey, in support of Respondents.

Chamber of Commerce of Northern Hudson County, in support of Respondents.

Clifton Chamber of Commerce, in support of Respondents.

Cold Storage Warehousemen's Association of the Port of New York, in support of Respondents.

Edgewater Chamber of Commerce, in support of Respondents.

Hoboken Chamber of Commerce, in support of Respondents.

Ironbound Manufacturers' Association, Inc., in support of Respondents.

[fol. 4] The Metuchem Chamber of Commerce, in support of Respondents.

West New York Board of Trade, in support of Respondents.

Peter Campbell Brown, represented by James J. Thornton and Sidney Brandes, Rm. 1540, Municipal Building, New York 7, N. Y., appearing for the City of New York, in support of Respondents.

A. C. Welsh, 26 Court Street, Brooklyn, N. Y., appearing for Brooklyn Chamber of Commerce, in support of Respondents.

Edward R. Laux, 11 Eighth Avenue, New York, N. Y., appearing for Port of New York Authority, in support of Respondents.

Leonard M. Shinn, Rm. 1305, Office of the General Counsel, U. S. Department of Agriculture, South Building, Washington 25, D. C., appearing on behalf of Ezra Taft Benson, Secretary of Agriculture of the United States, in support of Respondents.

J. S. Chartrand, 141 W. Jackson Boulevard, Chicago, Illinois, appearing for The Board of Trade of the City of Chicago, in support of Respondents.

J. L. Pease, Washington 25, D. C., appearing for Special Services Division, A.M.S., U. S. Department of Agriculture, Washington 20, D. C., in support of Respondents.

Louis J. Lefkowitz, Attorney General of State of New York, represented by D. F. Tynan, Asst. Attorney General, The Capitol, Albany, New York for the people of the State of New York, in support of Respondents.

[fol. 5] Henry E. Foley, 10 Post Office Square, Boston, Massachusetts, appearing for Port of Boston Commission, in support of Respondents.

George Waldstein, 10 Post Office Square, Boston, Massachusetts, appearing for Port of Boston Commission, in support of Respondents.

R. G. Curry and Frederick M. Dolan, 631 Southern Building, Washington 5, D. C., appearing for Albany Port District Commission, Albany, in support of Respondents.

Charles W. Merritt, 25 Broadway, New York, N. Y., appearing for The New York Chamber of Commerce, in support of Respondents.

Malcolm D. Miller and Loren B. Hillsinger, 6-129 G.S.A. Building, Washington 25, D. C., appearing for Executive Agencies of U.S. Government, subject to exemption of the Department of Defense, in support of Respondents.

John S. Shannon and Robert B. Claytor, 106 N. Jefferson Street, Roanoke, Virginia, appearing for Norfolk and Western Railway Company, Protestant.

John W. Hanipin, 1500 First National Bank Building, Richmond, Virginia, appearing for C. & O. Ry. Co., Protestant.

Horace L. Walker, 700 Travelers Building, Richmond, Virginia, appearing for Virginia State Ports Authority, Protestants.

[fol. 6] Warren Price, Jr., 1116 Investment Building, Washington, D. C., appearing for Delaware River Port Authority, Protestant.

Richard R. Bongartz, 1138 Six Penn Center Plaza, Philadelphia 4, Pennsylvania, appearing for The Pennsylvania Railroad Company, Protestant.

Donald Macleay, 1625 K Street, N. W., Washington 6, D. C., appearing for Maryland Port Authority, Protestant.

Charles R. Seal, 10 Light Street, Baltimore, Maryland, appearing for Maryland Port Authority, Protestant.

Martin A Meyer, Jr., Investment Building, Washington 5, D. C., appearing for The Virginia Railway Company, Protestant.

Philip G. Kraemer, P. O. Box 69, Camden 1, New Jersey, appearing for the Delaware River Port Authority, Protestant.

Jervis Langdon, Jr., 301 B&O Building, Baltimore 1, Maryland, appearing for Baltimore and Ohio Railroad Company, Protestant.

Charles J. Henry, Jr., 301 B&O Building, Baltimore 1, Maryland, appearing for the Baltimore and Ohio Railroad Company, Protestant.

William J. Taylor, 1138 Transportation Center, Philadelphia, Pennsylvania, appearing for The Pennsylvania Railroad Company, Protestant.

Rene J. Gunning, 300 St. Paul Place, Baltimore, Maryland, appearing for the Western Maryland Railway Company, Protestant.

[fol. 7] Henry E. Ketner, 1001 State Planters Bank Building, Richmond 19, Virginia, appearing for the Virginia State Ports Authority, in support of Protestants.

Charles McD. Gillan, 22 Light Street, Baltimore 2, Maryland, appearing for Baltimore Association of Commerce, in support of Protestants.

William L. Marbury, 900 First National Bank Building, Baltimore 2, Maryland, appearing for Maryland Port Authority, in support of protestants.

[fol. 9]

PROCEEDINGS

Exam. Boat: Gentlemen, the Interstate Commerce Commission has set for hearing at this time and place Investigation and Suspension Docket No. 6615, Equalization of Rates at North Atlantic Ports; also Fourth Section Application No. 32204, Import and Export Rates From and To North Atlantic Ports.

As you know, the procedure in this case up to this point has been under special rules, and the appearances will not be entered orally. We are ready at this time to proceed to the cross-examination of such witnesses for whom cross examination has been requested.

Mr. Welsh: We filed a petition for suspension of these tariffs early in this proceeding, and at that time we filed a statement of testimony—not a verified statement. That statement has been distributed to all parties, and if it please the Examiner, I should like to call my witness and have him sworn so that that statement may now take the effect of a verified statement. He can then return when required for cross examination.

The swearing of the witness will only take a few minutes, and we will then have the point clarified on the record as to the character of the statement that has already been filed.

Exam. Boat: I think it is somewhat of the same nature as others whose statements have not been verified, and I thought that we would take up those matters at the session [fol. 10] this afternoon, perhaps.

Mr. Welsh: Of course, there is one distinction in ours, and that is we filed one of the early petitions for suspension. That is just a little different from a subsequent intervention.

Exam. Boat: I don't think it is substantially different. We will handle those all at one time.

Mr. Welsh: Then it is your desire to consider that the first thing after recess?

Exam. Boat: Yes, we will pick up that matter this afternoon.

Call your first witness.

Mr. Macleay: Mr. Baylis.

ARTHUR E. BAYLIS was sworn and testified as follows:

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Bongartz: Mr. Examiner, do I understand that Mr. Baylis' verified statement is to be given an exhibit number?

Exam. Boat: That statement is referred to in the text of the—that exhibit is referred to in the text of his statement, is it?

Mr. Bongartz: No; what I am referring to is his statement, itself. Mr. Baylis has a statement of some 16 pages, to which is attached a copy of a report as an exhibit. But I was wondering what your pleasure was to be regarding the statement, itself.

[fol. 11] Exam. Boat: I think perhaps counsel should tender it at this time and we should receive it in evidence.

Mr. Colgren: I have given to the reporter the original of Mr. Baylis' verified statement, with the attached exhibits.

Exam. Boat: You tender it at this time in evidence?

Mr. Colgren: Yes.

Exam. Boat: That exhibit will be assigned No. 1.

Mr. Bongartz: I would assume at this time it would only be marked for identification, Mr. Examiner, because possibly some parts of the statement will be subject to objection or a motion to strike?

Exam. Boat: Yes, very well.

(Respondent's Exhibit No. 1, Witness Baylis, was marked for identification.)

Mr. Bongartz: And the exhibit that is attached to it will just remain—

Exam. Boat: May be considered a part of the statement, that is right, of the entire exhibit.

Mr. Bongartz: Shall I proceed?

Exam. Boat: Yes.

Cross examination.

By Mr. Bongartz:

Q. Mr. Baylis, as I understand it, you are Vice President of the New York Central, in charge of freight, sales and service; is that correct?

A. That is correct.

[fol. 12] Q. And you state that you have been with the New York Central for more than 20 years?

A. Yes, sir.

Q. How long have you been Vice President, in this capacity?

A. Since 1953.

Q. Has your service with the New York Central been entirely in New York?

A. Headquarters in New York.

Q. Over this 20-year period?

A. More than 20 years.

Q. More than 20 years. Does "more than 20 years" have any particular significance—21?

A. Well, it is a little more accurate than 20.

Q. As I understand it, from what you state, you were concerned with the earnings of the New York Central?

A. Yes, sir.

Q. And because of that, am I correct in understanding that in the making of freight rates—and I assume that you are in charge of making the freight rates for the New York Central; is that right?

A. That is part of the function of the department that I head.

Q. Yes. That in considering changes in the rates of the New York Central, you have the earnings of the New York Central in mind; is that correct?

A. Yes, sir. Gross and net.

[fol. 13] Q. Gross and net. And in that connection, with respect to proposed changes in rates, when you give consideration to that subject you have given some consideration, I would assume, to the costs the New York Central incurs?

A. When you are establishing new rates or new rate levels, costs are one of the factors. Only when you are establishing a new rate level.

Q. You must consider, when you are considering a change in rates and costs, you don't consider costs, then?

A. No, sir.

Q. You do not. Do you at that time consider the nature of the service to be performed under the rates proposed?

A. The service to be performed is the only thing that you sell for the quoted rate, so it is always a factor. That is our only product—service.

Q. Yes. Then, consequently, when you are considering a change in rates, you do take into consideration the nature of the service involved, the traffic for which the rates are to be changed?

A. The rates are the charges for a service—transportation service. I mean that is the commodity covered by the rate.

Q. Well, I am afraid, Mr. Baylis, you haven't quite answered my question. My question was whether, in considering a change in rates, you consider the nature of the service the New York Central performs under such rates.

A. I believe I have answered that.

[fol. 14] Q. Well, would you answer it again? Could you say "yes" to that question? Your answer borders on "yes", but it isn't clear to me whether it is "yes".

A. I don't think it is a yes or no answer, because you are asking me to define what the service is, if I understand your question. The rates that are changed, if you are changing and making new rates, are usually the prices charged for a service that you are trying to sell. I believe that should answer your question.

Q. Well, now, let's put it this way: When you have under consideration a change in your rate level, do you or do you not, at that time, in considering that subject, take into

account the nature of the New York Central's operations with respect to the traffic involved in that change?

A. If you are changing the basic rate level, or creating a rate for a service that heretofore did not exist, you consider many factors, including the type of service to be performed, the type of competition that you are trying to meet, the type of transportation that the customer wants, and then you come up with a change in the basis of the rates, or the establishment of a new rate.

However, that only applies where you are changing the basic rate level.

Q. Well now, do you consider you were changing the basic rate level when you published the tariffs under sus- [fol. 15] pension in this proceeding?

A. Certainly not.

Q. You didn't. Am I to understand from that that when you undertook to publish those tariffs, you gave no consideration to the operation to the New York Central involved in handling the traffic?

A. None whatsoever. And the reason for—

Q. I think you have answered my question.

A. I wanted to make sure.

Mr. Colgren: Can the witness clarify that?

Mr. Bongartz: I think the witness will be subject to redirect, and counsel can undertake to develop what he wishes on that subject.

By Mr. Bongartz:

Q. Mr. Baylis, at page 2 of your verified statement you refer to your concern over what you say is a decline in the New York Central's share of foreign traffic. Do you see where I mean there on page 2?

A. Yes.

Q. And then apparently that concern, at least from your statement, was based on a study of the United States Army Corps of Engineers. Is that what you are referring to when you talk about a decline in the share of your traffic?

A. Well, there are many ways to measure whether you are going up or down.

Q. I am talking about the way that you mention it here [fol. 16] in your statement.

A. Yes, sir.

Q. Am I to understand, when you talk about the New York Central's share declining, that that statement is based on this study that you mention here of the United States Army Corps of Engineers?

A. Not entirely. As I started to say, there are several ways to measure it. The one way we measured it was comparing ourselves with ourselves and watching the reports from the area men, the field men of our Sales Department, who are in constant contact with our customers.

Additionally, we measured it with representatives of the Ports of New York and Boston, and their experiences in attracting tonnage to their ports, and also compared our experience with that of other railroads serving New York and Boston.

In addition to all of this, the statement of comparison, that will be enlarged on by Mr. Crookshank, is taken from certain statistics of the Army Engineers. That was one of the factors.

Q. Now, this Army Engineers' statement that you refer to here was a statement, was it not, which involved traffic through various ports, regardless of inland origin or destination?

A. Those statements that are referred to in the fourth and fifth from the last line of my statement, at page 2, will be introduced in evidence by another witness.

[fol. 17] Q. You have no familiarity with it?

A. No, sir—other than the conclusions.

Q. You mean to say that without familiarity with the statement you are able to reach this conclusion that you mention here?

A. Yes, sir.

Q. You don't know whether the tonnage shown in the Army's statement originates or terminates in differential territory?

A. That will be clarified by the following witness.

Q. I am asking you whether you know.

A. I know the conclusion, the witness is going to introduce the statement.

Q. But this is your testimony, Mr. Baylis?

A. That is right.

Q. We can't talk about another witness now. We want to know what you know about it.

A. All I know is what is stated on page 2 and the reference.

Q. Well, isn't page 2 part of your statement?

A. Yes, sir.

Q. Then can't you tell me whether or not this Army Engineers' report that you refer to includes traffic which originated or was destined to points other than in so-called differential territory?

A. The statement includes affected and non-affected territories—the total statement. But as I say, the conclusions [fol. 18] reached from it will be described by another witness.

Q. I am not talking about the conclusions. I am talking about the traffic which the statement—

A. I just said it includes a total.

Q. It includes everything?

A. Affecting and non-affected territory. But the breakdown from the statement leads to the conclusion I made, which will be explained in detail.

Q. You used the terms "affected" and "non-affected". What do you mean by affected territory?

A. The differential territory.

Q. And non-affected territory?

A. Non-differential territory.

Q. Non-differential territory. Now, does that mean that where traffic moves from a point west of the differential territory, say to New York, yet which moves, however, on differential rates, that you exclude such traffic?

A. Yes, sir, because this case and these tariffs do not at this proceeding go west of the differential territory of official territory.

Q. Mr. Baylis, in considering this matter of your share of traffic, have you taken occasion to consider changes generally in the economy of the country regarding the development of other areas in determining just why, if you did lose traffic, that loss occurred?

[fol. 19] A. Well, we have considered that. More seriously in this proceeding, however, we are comparing ourselves with our own territory; that is, the official territory and the roads to the north. Quite as a separate thing, as a matter of good business procedure, we try to keep posted on the growth on the Gulf side, South Atlantic, the Mid-West, and the Pacific Coast areas, but that is not as important to us as our dwindling share of the available traffic moving export and import to and from the official territory.

Q. Isn't it a fact that the South and West Coast have developed materially commercially since the last war, since World War II?

A. They have, for various reasons that I could mention, but I believe it would not add anything to this case. However, while I believe it is common knowledge that the Southeast and the Far West are the rapid growth areas, geographically, in the country, that is a somewhat different subject than our pleading here for a right to be able to compete in our own territory.

Q. Now, you refer to studies which your railroad made for the purpose of this case for the years '46, '51 and 1956; why did you pick those years?

A. Well, '46 was a definite post-war leveling-off year. We took '51 and '56 just to get the 5-year spread as a matter of convenience.

Q. Leveling-off? Wasn't there a fairly high level of traffic in '46?

[fol. 20] A. There was, primarily in the West. In official territory you had some support program in '46 that would not be a normal year, but it was the first non-wartime eastern year.

Q. There was still a high level of traffic in the east at that time, was there not?

A. As against now, yes.

Q. '51, wasn't that the year of the Korean War?

A. There was some factor of the Korean War in '51.

Q. That was the year the Korean War started, wasn't it?

A. I think the preparation for the Korean War was spread generally from '50 to '52, inclusive. You had about

3½ years of impact, due to the Korean War, although the war itself did not take that long.

Q. The Korean War was at the time you were asked, '51?

A. I believe so.

Q. Do I understand the New York Central was proposing equalization of rates; that is, for import-export traffic to and from differential territory as between New York City and Albany?

A. Yes, sir. We propose an equalization for the North Atlantic range, all ports.

Q. When you talk about—I am referring to page 8, Mr. Baylis—what you term to be the basic right of railroads to compete on equal terms with competing railroads, does "equal terms" include one railroad giving substantially more service than another railroad at the same rates?

[fol. 21] A. Yes, sir. I think you will find it would be high folly in the national economy if the basic rate structure were built around a so-called standardized type of service, because there is absolutely no such thing as standardized service, standard mileage, standard terrain, standard weather, standard terminals, or any of the fluctuating things that go to make up one route as against the other into a geographic area.

Q. You state that ocean rates were equalized. When did that occur, in your opinion?

A. I believe it was 1935.

Q. Iron ore rates are not in this proceeding, are they?

A. No, sir, they are being handled in a separate proceeding that I think we are all familiar with.

Q. In your testimony you speak specifically of the fact that coal was not involved, and I wanted to make it clear that iron ore wasn't.

A. Export and import iron ore rates are not in this proceeding.

Exam. Boat: Coke is not involved, isn't that correct, a direct product of coal, I believe is the way it is described in another statement?

The Witness: That is right.

By Mr. Bongartz:

Q. Mr. Baylis, you are generally familiar with the facilities of the New York Central Railroad, in New York?

A. Yes, sir.

[fol. 22] Q. You are also acquainted generally with the operations of the New York Central Railroad at New York?

A. Yes, sir.

Q. And that includes how export and import traffic is handled?

A. Yes, sir.

Q. Now, you have a copy—I suppose your counsel would have it—of this exhibit of Mr. Gilman's, which carries the caption "Save time, Save Money, Ship Via the Port of New York", and it is a map of New York Harbor, showing railroad facilities?

A. I am generally familiar with that map.

Mr. Bongartz: Does the record show, Mr. Examiner, that the witness is looking, as I also am looking, at a map of the Port of New York? I want to make some reference to it.

Exam. Boat: Identified as Exhibit "D" of Witness Gilman's presentation. I think it is the one which has a caption "New York Harbor Terminals Map". I believe that is the way it is captioned on the outside.

Mr. Bongartz: I see. When I was reading I was looking at the caption on the inside.

Exam. Boat: I think we can identify it as that.

Proceed.

By Mr. Bongartz:

Q. Mr. Baylis, am I correct in understanding that the export-import traffic to and from differential territory over the New York Central is generally handled at its Weehawken terminal?

[fol. 23] A. Some of it is handled at Weehawken, some of it is handled at Manhattan Piers.

Q. Isn't it a fact that the great preponderance of this traffic is handled at your Weehawken Piers?

A. No, sir.

Q. What is the split?

A. Well, it varies with commodities and the seasons of the year. If you are talking about bananas, all of it is at Weehawken. If you are talking about automobiles, very little of it is at Weehawken—so it varies.

Q. Are you telling me that with respect to the automobiles, that traffic comes down the east side of the Hudson River?

A. Most of it.

Q. Traffic to and from differential territory over the New York Central goes to and from Weehawken, goes through Selkirk Yard, doesn't it?

A. Yes, sir.

Q. Selkirk Yard is a yard south of Albany?

A. South and west.

Q. South and west of Albany. From an operational point of view, the use of Selkirk Yard avoids trains going through Albany; is that correct?

A. Yes. We have a cut-off that goes around Albany to the south and serves the West Shore Branch that comes to Weehawken, prior to the entering into the cut-off at Selkirk [fol. 24] —just out of Selkirk. Those trains that bypass Albany that come down the east side of the river also use Selkirk.

Q. They have to cross the river there?

A. Through this cutoff.

Q. Now let's talk about Weehawken for a moment. Can you tell me what there is at this Weehawken terminal? You have got, of course, a rail yard there?

A. Yes, sir.

Q. You have a number of piers?

A. Yes, sir.

Q. And these piers are both open-top piers and closed piers, are they?

A. That is correct. They are also for the direct docking of the vessels and also for floating and lighterage.

Q. At what piers is there direct docking?

A. There could be direct docking at any of them, and there has been direct docking at all of them. At the present time Pier 9 is primarily used for direct docking; Pier 11

can be, and Pier K can be. All of the others are available if needed. And, of course, when not used for direct docking, rapidly silt in, and have to be dredged to put vessels in direct.

Q. Has it been dredged recently?

A. With the exception of the ones I mentioned, the others have not.

Q. Isn't it a fact that Pier 9 is an ore pier?

[fol. 25] A. It is an open-top bulk commodity pier.

Q. Yes. Isn't it used primarily for ore?

A. At the present time it is. It has been used for phosphate rock and sulphur, but it is at the present time being almost exclusively used for bulk import ore.

Q. Didn't you mention Pier 11?

A. That is right.

Q. Isn't that a lighterage pier?

A. It is just north of Pier 9, and is currently used for tie-up vessels and for lighterage.

Q. Do I understand, to go up to the top number, that Pier 13 is used primarily for mooring marine equipment?

A. Yes. It is not used for commercial purposes. It is for our own company purposes.

Q. Yes. And Piers 12 and 11-A are lighterage piers?

A. Lighterage and storage. 11-A is occasionally used for tie-up vessels.

Q. Then you have a bulkhead at the foot of 61st Street at Weehawken which is used for heavy material by barge and lighter; is that right?

A. I am not familiar with that.

Q. And Pier 7?

A. I am not familiar with your identification of the location.

Q. Well, I gave you the number of the pier.

A. You identified it by the foot of some street.

[fol. 26] Q. I said Pier 12.

A. Yes, Pier 12.

Q. There is a bulkhead right, as I understand it, between Pier 11-A and 11; is that right?

A. Yes. That is used for ground storage.

Q. Yes.

A. It actually doesn't extend into the river at all. It is on the land.

Q. Yes. Then Pier 7 is your grain pier, is that where your elevator is?

A. Yes. In the case of commodities, I mentioned bananas all moving from Weehawken, and automobiles mostly from the other side. Grain is another good example. We have only one grain elevator left now out of what used to be three, and it happens to be on the west side at Weehawken, so any handling of grain, either through direct loading into ships, or through transfer through the floating elevators, has to be done from Weehawken.

Q. That grain elevator was out of service for a number of years, was it not?

A. No.

Q. It was not?

A. No.

Q. The New York Central Railroad grain elevator was not out of service?

A. No, sir. It suffered very badly for a number of years [fol. 27] through loss of business, except government business occasionally, because the ex-lake grain rates were not equal. However, we did bring that case before the Commission several years ago and were successful in getting the agreement that we should have the right to compete on ex-lake grain, and since then we have been doing much better at the Weehawken elevator. Perhaps you thought it was out of service simply because we had a rate disadvantage which was later corrected.

Q. You said something about ground storage. Do I understand that export freight moving to Weehawken is unloaded on the ground before being loaded in a lighter?

A. Only a small portion of it, in extreme circumstances, such as some goods that are very heavy weight and are put on the ground pending the arrival of specialized vessels, or specialized space on regular vessels to handle it. Occasionally you have a backup for storage on the ground of military impedimenta of height, and a nuisance of things to have on wheels tying up railroad equipment. The general practice, however, is not to ground either the export or import, but to carry it through in a continuous movement to the ship, if it is export, or from a ship to a rail car and forwarding if it is import.

Q. What percentage of the New York Central's export traffic is lightered, or car-floated? In other words, what percentage of your traffic, differential territory, destined to vessels in New York Harbor, receives a water movement [fol. 28] on the New York Central?

A. I can't give you the exact percent because it wouldn't mean anything. Again, it fluctuates from day to day—other than to say a very large percentage of the export or import business of the New York Central has to be either lightered, floated, or trucked, but that is not unusual to the New York Central or to export and import freight, because the domestic freight is in the same situation—

Q. At New York?

A. At New York, due to the geography of the situation, with which you are familiar. There are very few piers or receiving docks, either for ships or storage that are served by railroad tracks in the terminal area of New York.

Q. Well, along those lines, take Weehawken; the only ships there are that banana pier, aren't they? Isn't that where you have your direct transfer from ship to car?

A. Well, on the New York Central, as I said, that is a direct transfer. We have had many direct transfers at Pier K, which is just north of the banana pier. We have had many direct transfers at Pier 7, the grain elevator. We have constant direct transfers on both sides of Pier 9, and occasional direct transfer of heavy pieces at Pier 11.

Q. Is it a correct statement that the preponderance of export-import traffic handled through the Port of New York, which moves in or out by railroad, is handled by [fol. 29] railroad marine equipment between the rail ends and the ship-side, or where the ship is docked?

A. The preponderance of everything handled by any railroad at New York is that, as I said, because of the geography, just the same as the preponderance of people that live in New Jersey and work in Manhattan have to come across the river by tunnel, ferry, or bridge. They can't walk it.

Q. Of course, in answering my question you said the preponderance of everything. Of course, I take it when you

say that, you are including export-import traffic to which my question is directed?

A. That is right. And also, my only reason for saying "everything" was to point out again the geography of New York is such that you have to consider this extension of your tracks by lighterage, trucking, and so on, as an extension of your service to get around the physical layout.

Q. If it could be done, you would prefer, would you not, to have all of your transfers direct from rail cars to vessels?

A. That would depend on the circumstances of service. We do some of that ourselves. And where it is advantageous from the standpoint of service, and adjacency to your yards, it is sometimes better to transfer direct by rail. In other cases the geography is ideally cut out for waterborne freight.

Q. Well, now—

A. It is much better to run right across a stream than [fol. 30] to go 100 miles around by rail for the sake of getting there all-rail.

Q. Well, let's take Weehawken again. Certainly from the point of view of transporting traffic to and from differential territory, you are not going a greater distance; that is, the New York Central isn't going a greater distance when it handles that traffic to Weehawken than it is when it is handling traffic into Manhattan Island, itself, is it?

A. It is about the same.

Q. It isn't a greater distance, is it? It is a lesser distance, isn't it?

A. It is about the same.

Q. Isn't it a lesser distance, Mr. Baylis?

A. No, I say it is about the same.

Q. I hate to take your time for this, but—

A. Actually, I think your average distance from Selkirk to Weehawken and Selkirk to Lower Manhattan is within two miles, most of the cars don't go to Lower Manhattan, and there would be a difference of about four miles, and in my opinion that is about the same.

Q. At least you have an additional movement east from Selkirk when a train crosses the Hudson River, up there, before going south to New York City, don't you?

A. That is the addition that is offset in part by a shorter run down the east side than the west side.

Q. Well, maybe your New York Central Railroad map [fol. 31] is an exceptional one.

A. I think all railroad maps are.

Q. Now, to get back to this matter of direct transfer. From the railroad's point of view, from your railroad's point of view, is it not less expensive to handle traffic direct to and from vessels at Weehawken than it is to load traffic to a lighter or a car-float at Weehawken and take the lading to some other point in New York Harbor?

A. Not in all cases.

Q. Can you give me—

A. And also, as I say, you are providing a service with a geography that was laid out for you in the historic beginnings of time. And therefore in some cases you are better off to lighter, and in some cases you are better off to seek additional means of handling all-rail. Service is what we are trying to sell, and the question of benefits depend on the individual movements.

Q. Can you cite me an instance of where it is less expensive to lighter traffic from Weehawken to the vessel involved, the steamship involved, than it is to have direct transfer from the pier at Weehawken to the vessel?

A. Well, you mean from Weehawken?

Q. Yes, that is what I am talking about.

You just answered it, that there were instances where it was, as I understood it, from what you said, less expen- [fol. 32] sive to lighter it.

I would like to have an instance of what you have in mind when you say that.

A. If the vessel is already at your dock, where the rail service terminates, then there is no need to consider lighterage. If the vessel is on the lower East River, or in Brooklyn, where most of them terminate, it is, in my opinion, much less expensive to lighter or float than to try to get there all-rail.

Q. Pardon me—

A. We have to handle it at the Port of New York, where the vessels are.

Q. Pardon me, Mr. Baylis, you obviously misunderstood my question. I am talking about Weehawken. The New York Central Railroad has a line of railroad coming into Weehawken with a rail terminus there, and rail yards. You have testified that on occasion vessels dock at Weehawken at your piers in Weehawken, and the transfer from vessel to railroad, or vice versa, is made right there?

A. That is true.

Q. My question to you was, from the railroad's point of view, is it not less expensive where you have that situation than where the railroad perforce must lighter or car-float the traffic from Weehawken to some other point in the harbor?

A. I would have to answer that in the negative, for two reasons: First, your costs—you want to talk costs, which I have no objection to. I think you are not talking the whole [fol. 33] story. But just the cost of handling one piece of cargo at Weehawken against lightering it to some other part of the harbor in some circumstance may be less, and in some circumstance it may be more.

Q. All right, let's stop right there. Give me an idea of what you have in mind when you say that it might be less. Give me an instance of where it costs the New York Central Railroad less money to lighter traffic from Weehawken to some point within the New York Harbor than it costs the New York Central to have direct transfer to a ship at Weehawken?

A. Well, such a case could easily exist where the question of a long delay and the holding of cars for the direct delivery more than offset a proper delay that could be facilitated by having the same ship offer a steamship pier where it wanted to be.

Q. You are assuming things, Mr. Baylis, which are not in my question.

Mr. Colgren: Mr. Examiner, may I interpose an objection to this line of questioning? Mr. Baylis has not testified to costs, as such, nor is there testimony in the direct pres-

entation of the so-called respondents in this case, along that line. We have, I think, established the compensativeness of these rates. This line of testimony, or the questions, rather, is beyond the scope and the issues in this proceeding.

Mr. Bongartz: Have you finished, Mr. Colgren?

[fol. 34] Mr. Colgren: I think so.

Mr. Bongartz: Mr. Baylis, at page 12, beginning at the bottom of 11, going to the top of page 12 of his statement, makes the statement that proposed rates are without question compensatory.

Mr. Colgren: That is precisely what I pointed out in my objection. I think we established the compensativeness of these rates.

Mr. Bongartz: Established through what source—not through Mr. Baylis, certainly?

Mr. Colgren: Mr. Baylis has not testified as to costs in this proceeding. I think the line of questioning, if you want to pursue it, is—

Mr. Bongartz: Isn't Mr. Baylis the witness who has stated here, as I just read, the proposed rates are without question compensatory; isn't that his testimony?

Mr. Colgren: Yes.

Mr. Bongartz: Then I think I have a right to cross examine on his testimony.

Mr. Colgren: As to whether the rates are compensatory.

Exam. Boat: The line of questioning you are pursuing, Mr. Bongartz, seems to relate to the service, I assume, that would be involved here. It doesn't seem to go to the element of expense in details.

Mr. Bongartz: Well, Mr. Examiner, nothing in these pro-

[fol. 35] ceedings is more important than a dollar. Everything relates to the dollar. And when we talk about the service involved, necessarily it has significance only in the ultimate cost of such service. It so happens that these respondents have not seen fit in this proceeding to offer anything in the way of their costs, yet they are serving a port, the Port of New York, which, without question, from a railroad point of view, is one of the most costly places to operate, and it is because of the harbor service that is involved in New York.

Now, Mr. Baylis has stated in his testimony that these rates which he proposes are compensatory. Now, the word "compensatory" has only one meaning, that the cost of the service over the New York Central is less than the revenue which the New York Central would obtain from these rates. He is the one who has opened the door to this. And I believe, under the circumstances, we have a perfect right to enter into this line of questioning to find out just what the New York Central does do over there.

There is a lot of talk here about their right to compete. There are a lot of generalities in one way or another; but let's find out what they do.

Exam. Boat: I thought that was the line of questions you were following.

Mr. Bongartz: That is the line of questions I am pursuing here.

[fol. 36] Exam. Boat: The objection is overruled.

Mr. Colgren: Mr. Examiner, I would like to indicate that we cannot, of course, agree with the statement of counsel, and that is all it is, that New York City is the most high-cost port in this North Atlantic range.

Along that line, too, if the Examiner please, counsel is apparently going to try to impress upon the Commission some theory that every movement of export and import freight individually must bear its individual costs. I see no other point to his trying to pin down the specific shipments, the specific operations, and so on, and thus relate the costs of these individual operations to the particular commodities.

Now, we must object to that line of cross-examination as being impertinent to the investigation. The Commission has long recognized that rates are compensatory if they contribute something above out-of-pocket costs of the whole operation in an area, and as a matter of fact, the Supreme Court has even indicated that rates may sometimes be reasonably—what's the term—Jervis?

Mr. Bongartz: Don't seek an answer from him.

Mr. Colgren: Reasonably confiscatory of railroad revenues, and therefore I think that this whole line of questioning is impertinent to the investigation.

Mr. Bongartz: It is rather amazing, Mr. Examiner, when a witness makes a statement in his prepared testimony [fol. 37] about compensatory nature of the suspended rates, and then we have objection from counsel when the witness is cross examined regarding the service that is accorded to the traffic under the proposed rates. Now, counsel speaks of out-of-pocket costs as being the floor of what is or is not a compensatory rate. But it should be noted on the record, in spite of that, and in spite of his burden of proof, that he has not introduced any evidence regarding out-of-pocket costs of the New York Central Railroad.

Exam. Boat: Let's proceed.

Mr. Colgren: May I just make one further comment in that vein?

Exam. Boat: I think we can argue this on brief, Mr. Colgren.

Mr. Colgren: I think you are right, Mr. Examiner, and I think it doesn't have any bearing on the testimony in the proceeding. That is our position.

Mr. Bongartz: Shall I proceed?

Exam. Boat: Yes.

By Mr. Bongartz:

Q. To get back to this question, Mr. Baylis, we better have the terms and conditions of the question clear before you undertake to answer it. Can we take this situation: You have the vessel docked at a pier at Weehawken, one of the railroad piers at Weehawken, to receive freight for export. We will assume for the purpose of this question that there is no matter of car delay or vessel delay in con- [fol. 38] nection with this transfer.

At the same time, you have a railroad car come into Weehawken, the contents of which have to be lightered to a point in New York Harbor to shipside.

My question to you is: which, from the railroad's point of view, involves the lesser operations?

A. The "lesser operation", would you define that?

Q. Rail operation, the discharge of that car at Weehawken.

A. It could go either way.

Q. All right, now suppose you give me an explanation of what you mean by that?

A. The railroad could be—well, if I may, I would like to say that you are talking about a complete service, a line-haul service, and complete delivery in both cases.

Q. Yes. The line-haul service is the same in both cases, it has come into Weehawken.

A. And the amount of service, as you call it, provided on each could vary with the commodity, the method of handling—the fact that a ship—

Q. Let's assume—

A. May I finish?

Q. All right, go ahead.

A. The fact that a ship docks against the rail head at one time, and that same ship or another ship may be at another pier that is not at a rail head at another time has [fol. 39] very little to do with the importance of the business or the cost that you want to refer to or the amount of service performed, because costs, of course, are based on units. The more units handled, the lesser the cost, and that is why the cost might be, of the service performed, might be high on the direct delivery one time, and low again if you had an increased number of units.

Q. All right, now—

A. But the amount of service provided by the railroad can vary either way, and you cannot set up, in my opinion, a fictitious idea that you can have your choice at New York of one or the other. It is all one complete total terminal laid out around water, and you have to take the harbor as you find it today, and we are not talking whether we would like all of it by lighter, all of it by truck, or all of it by direct delivery.

We know that we have to handle it in all of those ways, and all we are saying is that we should have a right to complete our railroad service at New York at no penalty to the shipper in the rate level.

Q. I understand what your contentions are, Mr. Baylis, but I still don't think you have answered my question. Going back to what we were discussing, back to Weehawken, with a ship there at the dock; my question to you

is whether it is less costly, or if you want to avoid the word "cost", if there is lesser service required by the railroad to unload a car to the ship and unload a car of the same commodity, the same amount in the car, to lighter [fol. 40] for subsequent movement, New York Harbor to another ship?

A. I answered that.

Q. I believe you haven't.

A. I said it could be either way.

Q. But how could it be either way? I want to get an explanation of that. You have not given it to me. All you have said in explanation is that you have a railroad which performs all kind of service in New York Harbor, that the harbor, of its nature, requires all that kind of service, and that does not answer my question.

A. Well, then, you better rephrase the question, because that is the answer I have for what I thought your question was.

Q. Is that the only answer you can give me to my question?

A. Yes, sir.

Q. How much marine equipment does the New York Central have?

A. Well, of tugs, lighters and scows, let's say between 150 and 175 units at the current operating time. Some are laid up. Some are under bad order at the present time, not being repaired, due to business levels.

Q. Do you know that Report PT-5, published by the Association of American Railroads—and this report to which I refer was dated December 1, 1957—shows that the New York Central, at New York, owns 17 tugs, 36 car-floats, 13 steam diesel gas hoist lighters, 123 covered barges, and [fol. 41] 74 scows, for a total of 263 pieces of marine equipment?

A. If that is the statement you are reading from, those are undoubtedly authentic figures, but in usable condition and available for service, now, it would be less than that.

Q. You will accept the figures?

A. As the inventory, yes.

Q. Do you have split deliveries?

A. Yes.

Q. On lighterage at New York?

A. Yes.

Q. What is the operation of a split delivery?

A. We will make part of the load at one delivery point, another part at another point, similar to land delivery, where you have stop-off for loading or stop-off for partial unloading.

Q. Doesn't it involve, as a rule, the unloading on the ground, or on the pier, say at Weehawken, before loading of the lighter; in other words, the split occurs before the lighter is loaded? When the lighter is loaded, accordingly—

A. The lighter could be loaded, and often is, direct from a car or a group of cars, without physically flooring the freight. And then the split comes on the delivery route. I am speaking of export.

Q. This map that you have in front of you shows, does it not, the lighterage limits in New York?

A. Yes.

[fol. 42] Q. If you will look at the map, it would appear that the lighterage limit—the northern lighterage limit on the Hudson River is just north of the George Washington Bridge?

A. Yes.

Q. It is marked by "L", with a dotted line underneath it?

A. That is right.

Q. And on the—

A. Just south of that.

Q. What?

A. Just south of 130th Street.

Q. I am looking at the Jersey side of the river, Mr. Baylis.

A. On the Jersey side it says the George Washington Bridge, on the Manhattan side it is south of the bridge.

Q. On the Manhattan side it is marked at a point that says 135th Street?

A. North of 125th, at 135th Street.

Q. 135th Street?

A. Yes.

Q. Now, carrying the lighterage limits down the Jersey side, we go down through Kill Van Kull, the lighterage limits, referring to the Jersey side, going south, carry you through the Kill Van Kull and go down, according to a legend at the left-hand bottom of the map, to Perth Amboy; is that correct?

A. It goes up to where the Skyway crosses the Hackensack River, that route.

[fol. 43] Q. Right. That is at a point—

A. It goes where the Belleville Turnpike crosses the Passaic River on the other route, and it goes into the slip on the New Jersey-New York State Line, just south of Elizabethport, near Elizabeth Avenue, at the dead end of Broadway on that area.

Q. Just a minute, there, I think you are talking there, Mr. Baylis, about the Staten Island side?

A. That is right.

Q. The legend says "New Jersey Lighterage Limit extends to Perth Amboy"?

A. Yes.

Q. That is down below?

A. That is right. It is down that river.

Q. Down the Arthur Kill?

A. That is not on this map.

Q. That is not on the map?

A. No.

Q. On the Staten Island side, the extent of the lighterage limit is shown as you mentioned it there?

A. That is right.

Q. Now, going up into the East River and the Harlem River, will you please point out where the lighterage limits extend?

A. Well, in the lower bay, it comes in at Owl's Head Park, just south of Owl's Head Park, just above the Narrows, and goes up the East River, on the Queens side of it, just [fol. 44] at Hell Gate—

Q. Astoria Park?

A. —and Astoria Park, just south of the New York Connecting Railroad, and follows the easterly bank of the Harlem River up to 161st Street.

Q. And then if you didn't mention on Staten Island, on the Narrows side, the lighterage limit there, in the neighborhood of Highland Boulevard?

A. Just north of Quarantine Station.

Q. Now, the waters between these points that you mentioned are all within the lighterage limits of New York Harbor; is that correct?

A. Within the boundaries as described is what is known as New York, in the eyes of the public, receivers, and foreign traders, but more close at home it is called the New York lighterage limits, to and from which area the flat, through rates listed on New York apply, of all types, export, import, coastwise, intercoastal and domestic.

Q. And it is often referred to, is it not, as free lighterage?

A. That is right—for the reason that it takes the flat New York rate, and any additional mileage beyond this is not regarded as being New York, and there is something charged for it.

Q. Now, in other words, going back to your Weehawken terminal, on any freight that has to be lightered by the New York Central, the New York Central holds itself out [fol. 45] to take that freight on a lighter to any point within New York Harbor within the confines of the lighterage limits?

A. Correct.

Q. Without extra charge?

A. Correct.

Q. Do you have occasion to lighter to Port Newark from Weehawken?

A. Yes, we sometimes lighter to Port Newark, and we sometimes go there all-rail. Sometimes it is better to lighter, and sometimes it is better to go all-rail.

Q. If you go all-rail, you have to go via another railroad, do you not?

A. That is right.

Q. And pay some sort of switching?

A. We have an arrangement.

Q. Which involves a switching charge?

A. No.

Q. Well, is it some sort of reciprocal switching?
A. No.
Q. Suppose you tell me what it is?
A. It is a division.

Exam. Boat: We will recess for 10 minutes at this time.

(Recess taken.)

Exam. Boat: Come to order, please.

By Mr. Bongartz:

Q. Mr. Baylis, there is a facility of the New York Central at Weehawken which I don't believe we referred to, [fol. 46] and that is a transfer bridge there; is that Pier 4?
A. Pier—
Q. Or does that come down there where it says FB?
A. It is Pier 1, really. Just south of Pier 1, which is part of it. The "FB" means float bridge.
Q. We are referring to this map exhibit that we have been referring to right along. Now, a float bridge is a point on the railroad from which cars are transferred from the land on to rails on car floats?
A. That is correct. It is a continuation of the rail service without breaking bulk or without unloading or unsealing the car. We merely move it along on additional rails that are on this float, and the cars are then taken—
Q. The floats are taken?
A. The float with the cars on them are taken to points where they can be then hooked up with other railroad lines by land or on docks, or the floats can be tied up alongside of steamships for handling direct.
Q. So in connection with the Central's operation with respect to the handling of export-import traffic, the use of floats would be shipside or alongside a pier at which a ship is docked; is that right?
A. Yes, sir.
Q. We talked about the amount of marine equipment which the New York Central has. What facilities does it [fol. 47] have for the repair of marine equipment?
A. We have our own marine shops, the same as we have our own engine terminals and car repair shops, throughout

our system. Our marine shops are in New York. That is where our navy is located. We also use the commercial shipyards, about four of them, in New York Harbor.

Q. Do you—

A. We do most of the above-water work ourselves, and contract out the underwater work.

Q. Among those yards are the Port of New York Marine Repair Corporation and Dwyer Lighterage?

A. I am not familiar with us ever doing business with either of those two.

Q. But you have four firms with which you do business?

A. Four, about.

Q. Yes. Can you give us any idea of the amount of marine personnel that the New York Central employs?

A. No, I don't have those figures. They can be developed.

Q. But that would include, as far as a tug is concerned, the captain, mates, engineers, deck-hands?

A. The normal crew.

Q. Yes. Is your export-import traffic, as it is involved in this proceeding, balanced? Do I make myself clear as to what I refer to as balanced?

A. We are generally an eastbound line. I would say over [fol. 48] any 5-year period of normal business, if there is such a thing as normal business, the export would exceed the import by maybe 1½ or 2 to 1.

Q. You referred to New York facilities—New York Central facilities on the east bank of the Hudson River. Those facilities are what?

A. Are you talking of only water facilities, or everything?

Q. Well—

A. We have a— .

Q. At 60th Street, is that the facility to which or from which export-import traffic is handled?

A. Yes. To give you a description of the all-rail route and its facilities, you will notice that the red line along the east bank of the Hudson River crosses at the extreme top of the map where the Harlem River joins the Hudson at a point called Spuyten Duyvil, and it continues down along the river with very little, practically nothing to do

except move along until it gets to our 72nd Street Yard, which extends from 72nd Street to 59th Street, and that is a large receiving and also consolidation yard for outgoing cars on the land side, and it is buffeted with five piers and float bridge on the water side.

The railroad goes on down then to the 30th-36th Street area, where we have another large team track yard and some industrial sidings and hold tracks. There are no water facilities at that point.

[fol. 49] The railroad itself goes on an elevated grade and serves industries and on down to St. John's Park, where it terminates in a loading and unloading terminal. Below that we have piers at Pier 16 and Pier 17, at Barclay Street.

Q. The map doesn't seem to show it, but is there a connection of the railroad between the area at 36th Street and south of it?

A. Yes. It is a continuation.

Q. There is a continuation?

A. We come out of a cut at 36th Street, stay at the level of the ground, and then go up on an elevation.

Q. At what points that you have mentioned is export-import traffic handled by the Central?

A. Direct from the cars at 60th Street, and from piers at Barclay Street, to a lesser degree.

Q. You say direct from cars at 60th Street?

A. Yes.

Q. Are you saying direct from cars to vessel?

A. No. There are no docking facilities any more, due to the out-of-condition situation of the docks at that point. However, the cargo is transferred there either to truck—it is a big trucking point—for delivery or receipt, and it is also a car float and lighterage point.

Q. Where it is lighterage or car float, the lighterage or car floats would be moved around the harbor at no cost to [fol. 50] the shipper within the lighterage limits?

A. The lighterage is there, and if it came into Weehawken by rail and the lighter is floated, here you come into 60th Street, a lighter, float, or truck, wherever the vessel is at the flat New York rail.

Q. Is that trucking in lieu of lighterage?

A. Yes.

Q. That is trucking without charges within the lightering limits as well?

A. The continuation of the delivery trucks.

Q. Now, what about these facilities south of 60th Street?

A. Which one?

Q. The ones—

A. The ones I mentioned?

Q. Yes.

A. On the water?

Q. Yes.

A. Pier 16 and Pier 17 are the lighterage piers. At the present time they are primarily used for domestic business. They are available, however, for export or import.

Q. Well, to the extent that you have—to the extent you handle export-import traffic on the east side of the river, it is generally handled through this 60th Street terminus?

A. At the present time most of it is. It hasn't always been that way.

[fol. 51] Q. We are talking about the east side of the Hudson River?

A. That is right—Manhattan Island.

Q. Right. Are there any hold yards on the Central prior to getting to 60th Street?

A. Well, we hold all the way from 72nd, down to 60th Street, which is, itself, a hold yard. Also, we have hold tracks at Harmon.

Q. Do you have any hold yards back of Weehawken?

A. Yes, sir, North Bergen.

Q. When you talk about export-import traffic handled through 60th Street, isn't that traffic which generally is destined to or originating from points outside of so-called differential territory?

A. No.

Q. Wouldn't any of your New England export-import traffic take that route?

A. It logically would. There is very little of that, however, as compared with the bulk of the export-import that finds its way into that terminal. A lot of the New England

business moves through Boston to the extent the port is used, but there, again, Boston and New York have the same rate disadvantage.

Mr. Bongartz: Can we strike the argument?

The Witness: I think that is an explanation of how the traffic moves.

Mr. Bongartz: Well, I would like you to restrict yourself [fol. 52] to the explanation. Pardon me a moment, please.

By Mr. Bongartz:

Q. Do you have arrangements at New York, Mr. Baylis, in the handling of export-import traffic with the Brooklyn terminals?

A. Brooklyn is in the free lighterage limits, and as such is part of the point known as New York Harbor, and we have through rates of all varieties to and from the Brooklyn contract terminals, the Brooklyn Eastern District Terminal being one.

Q. Which are the others?

A. Bush Terminal, Jay Street terminal—

Q. New York dock?

A. New York Dock, I don't know whether we should call that one of them or not, but—

Q. Isn't New York Dock owned and operated by the Port of New York Authority?

A. That is what I said. I don't know whether we should call it a contract terminal. I don't actually know the status. It has been purchased and is being rehabilitated by the Port Authority. The whole point is we have a complete line of domestic rates, export rates, import rates, class rates, commodity rates, and everything, because Brooklyn is just the same—and its land and rail and water facilities are just the same as anything else in the harbor.

Mr. Welsh: Mr. Examiner, may I ask at this time that any reference to Brooklyn Eastern District Terminal be [fol. 53] stricken from the record? They do not handle export or import freight. There are no export or import rates applied to that terminal.

Mr. Bongartz: The witness apparently doesn't agree with counsel, so I don't know if we can take your statement.

Mr. Welsh: On the contrary, if the Examiner please, the question was entirely too broad. The witness answered the question as put to him. The question was not limited to arrangements made with the waterfront terminals of Brooklyn exclusively on export-import coastwise and intercoastal business, so, of course, he has to answer the question as it was put.

Exam. Boat: Perhaps he can clear it up later on redirect. You could ask a question to clear it up.

By Mr. Bongartz:

Q. As far as your knowledge extends, Mr. Baylis, what terminal railroads in Brooklyn do you interchange export and import freight at?

A. It was my understanding we are in position to interchange—I know we are in a position to interchange with all of them. If the BEDT at this time is not, because of their own desires, handling export-import freight, the question is moot, but the geography of Brooklyn, the transportation layout makes it no different in our consideration of this case than any other point in the lighterage limits of New York.

Q. With respect to the interchange of traffic with these Brooklyn terminals—does the New York Central pay such railroads a division or allow such railroads a division out [fol. 54] of the through rate?

A. Generally they do.

Q. So that out of these export-import rates from differential territory to and from differential territory and New York, to the extent that the traffic under such rates is moved via those Brooklyn terminals, you have to allow such terminals a cut out of that rate?

A. There are two ways. One applies on domestic freight, where they are line-haul carriers, they being those who perform the line-haul functions, for instance like the Long Island Railroad; and the other would apply to the export-import freight, where there is only what might be the same as a switching rate at Philadelphia or Baltimore, or Detroit or Chicago, where the line that originates or terminates the traffic isn't the line that has the road haul.

In those cases you pay a switching rate. Here it is the same thing, in principle; but they call it an allowance, a terminal allowance, for bringing it over to you, and that is taken out of the through rate, the same as the switching rate is before the road-haul factor is pro-rated among the road-haul lines.

Q. Aren't certain concessions made to those terminals with respect to per diem?

A. Not to my knowledge.

Q. You are not familiar with the content of the agree-
[fol. 55] ment between the railroads in that respect? When I say "railroads", I mean these Brooklyn terminals.

A. I know we have arrangements, but it is not, to my knowledge, a concession.

Q. What is the arrangement?

A. It is a definition of how the per diem shall apply, as you have to define it in every terminal area, whether it is on an average basis, or so many days free.

Q. Do you know what the arrangement is?

A. It is a combination of—

Q. Can you tell us what it is specifically?

A. In number of days, I can't, but there is a specification of the number of days. It applies throughout the entire harbor.

Q. You wouldn't say, would you, Mr. Baylis, that your arrangement with the Brooklyn terminal lines is in all respects similar to a situation where some line at destination does some switching on land?

A. It is much more favorable than many others we have.

Q. All right, tell me how.

A. Because it gives them less use of our cars in other arrangements in other places.

Q. Less use?

A. Yes, less free use.

Q. Less free use of your cars?

A. Yes.

[fol. 56] Q. Are you familiar with the fact this Commission has been conducting an investigation into the amount of use of railroad equipment made by these Brooklyn terminals?

Mr. Colgren: I object to that question, Your Honor. There is no basis laid for that question. I think it is, well, just plainly immaterial.

Mr. Bongartz: I can lay the basis for it.

Mr. Colgren: In extenso, Mr. Examiner, I think it makes little difference whether this witness is familiar with whether or not the Commission is making an investigation in another proceeding, and certainly the fact of that investigation is no proof of what the Commission may ultimately find.

Mr. Bongartz: This witness, if you please, undertakes to make a general statement in comparison with one kind of operation and another, and then when he is questioned to specify what he has behind the general statement, we run into this difficulty.

Exam. Boat: The objection is sustained.

By Mr. Bongartz:

Q. Do you know whether or not these marine operations of the New York Central at New York Harbor run into any difficulties due to weather and tidal conditions?

A Only the normal seasonal things that happen—

Q. On the waters?

A. On any terminal operation. It took me eight hours to get down here last night.

Mr. Moerman: On the Pennsylvania?

[fol. 57] The Witness: Three hours getting into the Washington terminal, and that is not on the water.

By Mr. Bongartz:

Q. Do you know how the New York Central's marine operations performed yesterday?

A. Yes; they were all on schedule.

Q. They were?

A. Very little business, though.

Q. In other words, they were on schedule to the extent they didn't move; is that it?

A. It is getting easier and easier to keep them on schedule, because our rate structure has driven away all the business.

Q. Do you know what you pay over New York to load and unload a box car, the content of which is to be lightered?

A. There is a payment per hour for labor. It varies with the seasons as to what the productivity per man per hour is. It has been our observation, because of the relatively lower rate of pay on the railroad stevedoring side than on the contract stevedoring side, that we end up with two-legged creatures that are just barely warm, and the productivity per man is low.

The amount of work done in the spring and fall is very different from the summer or winter, so you have a wide fluctuation.

Q. Do you have any idea of wha –

A. No, I can't give you any figure. It wouldn't mean anything.

Q. Do I understand what you have said in answer to my [fol. 58] question that the New York Central has made no study of the cost of handling export-import traffic through the Port of New York, particularly with respect to cost of handling such traffic via water at the Port of New York?

A. That is correct.

Q. Do you know a man by the name of John F. Nash?

A. Yes, sir.

Q. Who is he?

A. He is our operating vice-president at New York.

Q. He is reported to have made a study in 1955—wait a minute, isn't he conducting a study at the moment?

A. No, sir.

Q. He is not?

A. He is conducting a lot of studies all over the system—yes, the answer would be "yes," he is conducting a lot of studies, that is his job, to supervise studies, among other things.

Q. He is reported in the New York Journal of Commerce, issue of January 28, 1958, as stated "The New York Central is making a study of its costs in the New York area."

A. That is perfectly correct.

Q. Is that correct?

A. That is correct.

Q. Do you know a man by the name of A. F. Coon?

A. Yes.

Q. Didn't he make a study in the year 1955 for that year [fol. 59] in which it showed that as against the gross freight revenue in this New York area of 82 million dollars for the New York Central, the Central had costs of 92 million dollars?

A. Well, as is often the case, the New York Journal of Commerce is highly inaccurate, or we will say incomplete. Mr. Coon's study was made on all types of traffic handled in a highly concentrated area of Manhattan. It had no relationship to export-import freight.

Q. You mean it didn't include it?

A. It included everything.

Q. It included export-import freight?

A. But in this highly concentrated area that he studied, export-import freight was just an infinitesimal part of the study. Actually, the study was made for a purpose having nothing to do with anything but taxation in a certain section of Manhattan Island. That is why I say the reference that you are reading from—I am familiar with it—it is highly inconclusive and incomplete.

Q. I take it from your scope of your answers that you have seen this study?

A. No, I haven't.

Q. Are you going to produce a study, Mr. Colgren, for this case?

Mr. Colgren: I beg your pardon.

Mr. Bongartz: Are you going to produce this Coon study?

Mr. Colgren: No. After the witness indicated it is not [fol. 60] relevant in our estimation.

Mr. Bongartz: Suppose we consider it relevant will you produce it?

Mr. Colgren: No, I don't think so.

Mr. Bongartz: Do you refuse to produce it?

Mr. Colgren: Well, yes.

By Mr. Bongartz:

Q. Don't you consider, Mr. Baylis, this water operation within these free lighterage limits of New York Harbor performed by the New York Central in connection with export-import traffic an expensive operation?

A. Related to what?

Q. In and of itself, an expensive operation?

A. I don't know what is expensive and what is not. Sometimes, as you know, $5 is a lot of money, in other cases it isn't. It is still the same $5 bill.

Q. Aside from your $5 reference, what is your view on that? Do you regard it as an expensive operation?

A. When you compare it with all of the other expenses that go into the performance of railroad transportation service from the affected area to New York, it isn't expensive, it isn't important. It is just part of the total program.

If you are handling only one car, now and then, and your total allocated costs fall on a very small volume of business, it is much more expensive per unit than if you had a lot of business over which to spread these allocated costs. But in [fol. 61] and of itself, as part of an entire transportation service from many, many origin areas, to and from this New York point, it is not, in my opinion, expensive.

Q. The other day, following the decision of the Interstate Commerce Commission in Ex Parte 212, you were quoted by the New York Times, a newspaper in New York, in its issue of February 13, as follows: "'The decision,'" referring to the Interstate Commerce Commission's decision, "'is disappointing,' Mr. Baylis said, 'in that it failed to give us revenues for important and expensive services we are performing, such as the handling of water-borne freight.'"

Did you make that statement?

A. Yes, sir.

Q. Now, Mr. Baylis, as I understand it you have made, or your company has not made for this proceeding a cost study for the handling of traffic as water-borne traffic at New York; is that correct?

A. We have made no such study; regarding the handling of water-borne freight as part of the total service job.

Q. Having made no such study you are not in position to state whether the costs of handling this traffic are lower than or higher than the revenue under present rates, or the revenue under the proposed rates?

A. May I have that question, read, please, Mr. Reporter?

(Question read.)

[fol. 62] The Witness: There is no such thing as the present rates or proposed rates. The rate base remains the same. All we are trying to do is to equalize on the present basis with Baltimore. It doesn't change the rates as a rate case. We regard costs, as I have said, as part of the total service performed in receiving, carrying, and delivering freight.

The cost, if you wanted to carry it to a fine unit point would show that everything that the New York Central carried in 1957 was greater than whatever the level of the rate was on whatever commodity you want to mention, because we lost money in 1957. Therefore, this freight, all domestic freight, all coastwise freight, all switching service, and everything, on their unit basis, was handled at a loss.

In this proceeding we are not talking about the level of rates, we are talking about equality of rates for similar types of competitive handling.

I think that answers your question.

By Mr. Bongartz:

Q. Well, I don't know that I agree with you that it answers it, but I will put a question to you this way: You have already stated to me that you have not undertaken to determine the cost of service with respect to this traffic?

A. That is right.

Q. It follows from that, does it not, that not having undertaken to develop the costs of handling this traffic you cannot say whether the revenue that you receive for han-[fol. 63] dling this traffic, under the basis of the present rates, is greater than or less than the cost of handling them?

A. In our opinion, under either basis, the rates, if you want to call them that—under the basis of the same rate at an equality or an inequality level, this traffic is profitable traffic. It earns us in gross twice as much as our domestic traffic, in ton-mile earnings per car, per ton-mile, it earns over twice as much as our other business. The cost of picking it up inland, or delivering it through New York, or picking it up at New York and delivering it inland, are all part of the complete package, and we believe that these

units carry themselves now, and, of course, would carry themselves much better were we able to competitively to build up a more healthy volume of traffic.

Q. That all sounds very well, Mr. Baylis.

A. Thank you.

Q. But let us get down again to the idea of cost of service. Do you recall a case which you participated in last summer involving rates on iron ore through a point called Contre Coeur, Quebec?

A. Very well. In that case we were seeking equality with—

Q. No, in that case you put a cost study in, didn't you?

A. You did.

Q. No, you did.

A. We answered yours.

Q. No, your memory is faulty there, Mr. Baylis.

[fol. 64] A. We had certain figures of the total rail costs from Contre Coeur. We had certain figures of the transfer cost and certain water figures. We did not break the rail factor down into tiny pieces the way you were suggesting here.

Q. Do you mean to say that in that case the New York Central did not put in through a cost witness the cost as it saw it of handling iron ore from Contre Coeur to Youngstown?

A. I said we had the total rail costs.

Q. Yes, that is right.

A. I said here the total—

Q. You do not have the total cost here?

A. We have Form A, on all of the business we handled.

Q. But you have not shown us here what the cost is of handling this export-import traffic?

A. Because we say that the single cost factor per unit, or any other basis at New York, is irrelevant.

Q. Well, aside from your reason for not doing it, the fact remains that you haven't done it, isn't that correct?

A. We considered it unnecessary, and therefore didn't do it.

Mr. Bongartz: All right, I think that about exhausts this subject, Mr. Examiner.

I wish to move to strike Mr. Baylis' statement beginning at the bottom of page 11 through the top of page 12, the first part of it is that the proposed rates are without question compensatory. It is argumentative. It is without basis [fol. 65] in fact. The witness has admitted that he has not made any study of these costs, and compensatory can only have that relation here. I ask that be stricken.

I ask the remainder of the sentence be stricken as purely argumentative. It is not up to this witness to give an opinion on what is reasonable. That is what the Commission is seeking to determine here, whether these rates are reasonable under the term as it is used in the Interstate Commerce Act, and likewise whether they are non-discriminatory. It is not the province of this witness to evade the question by stating the rates are reasonable and non-discriminatory.

To go on with the remainder of that page, page 15, again, where the witness undertakes to solve the entire problem to the Commission when he talks about the rates proposed as will be demonstrated—there he even goes to somebody else, he doesn't depend on his own testimony—are not unreasonably low, so as to require the intervention of the Commission on that score. Then he talks about capricious and unjustifiable acts of other carriers that acted within their rights under the Interstate Commerce Act, and talks about the Commission lifting its deterring hands, if you please.

I ask all of that material on page 15 be stricken as being entirely improper in this case.

Both statements, starting at the bottom of page 11, extending into page 12, and the material that I just referred to on page 15.

[fol. 66] Mr. Colgren: Mr. Examiner, if I may answer the motion to strike: The railroads opposing equalization have had the entire testimony of all of the railroads seeking equalization for a matter of some seven months, or so, and should by now, I think, understand the format of the entire testimony before the Commission.

Mr. Baylis, it is quite apparent, has given a general outline of the position of the carriers. It is not incumbent for him to state a conclusion based on his studies, information, reports, and so on, in the body of his testimony, and refer to

following testimony of other witnesses looking into the specifics.

Now, the motion to strike is directed towards the statement that the rates are without question compensatory, and again to another statement that the rates are not unreasonably low. Now, we may refer back to witness Crookshank's testimony, page 26, where by all standards of the Commission as to car-mile or ton-mile revenues there is the testimony which he establishes that these rates produce, as Witness Baylist has indicated, well over the average return to the New York Central of our overall traffic.

In terms of car-mile and ton-mile revenues, we have established, we think, sufficiently for consideration in this proceeding, and for guidance of the Commission, the com- [fol. 67] pensitiveness of these rates.

Exam. Boat: The motion is overruled, with the exception of that part of it which relates to the last two sentences on sheet 15.

Mr. Bongartz: Wouldn't it be the last three?

Exam. Boat: The last two sentences only, Mr. Bongartz.

Mr. Bongartz: Only the last two?

Exam. Boat: Yes.

Mr. Bongartz: Leaving his conclusion as to the reasonableness of the rates which can be nothing but a conclusion of law to stand?

Exam. Boat: That I understand is to be considered in connection with all of the evidence that will be introduced.

Mr. Bongartz: If you will permit me, sir, I think if something of that character is to be contended, it is up to counsel to make that contention in his brief, it isn't up to a witness to sanctify it through sworn testimony.

Exam. Boat: Well, I have ruled on both parts of the exhibit.

Mr. Bongartz: That concludes my questioning of Mr. Baylis, Mr. Examiner.

Mr. Langdon: Mr. Examiner, we have tried within limits to divide up the cross-examination here. In this particular case there are a few questions by Mr. Macleay.

Exam. Boat: Very well.

By Mr. Macleay:

Q. Mr. Baylis, will you please refer to page 14 of your [fol. 68] statement which has been marked for identification as Exhibit 1.

Mr. Welsh: If the Examiner please, we can't hear counsel over here at all.

Mr. Macleay: I am sorry.

By Mr. Macleay:

Q. You make the statement, and I quote, "It is not peculiar that the railroads serving the ports with favorable rate differentials could gain a disproportionate share of traffic to and from those ports."

By that are we to gather that it is your opinion that they have gained a disproportionate share of traffic?

A. Yes, sir.

Q. Upon what studies do you base that statement? What comparative studies of your traffic with the rail traffic to the other ports?

A. I outlined at the beginning of the cross-examination the type of reports that we gather as a regular matter of business from our own field staff, our discussions with the other railroads, and our use of one of the U. S. Army Engineers' reports.

Q. Do the U. S. Army Engineer reports break down rail traffic as distinguished from other traffic?

A. No.

Q. Did you have in mind such reports as are the basis for, for example, Witness Crookshank's Exhibit AJC-15, which shows export carloads unloaded at the various North [fol. 69] Atlantic ports over a period of years?

A. That is part of it. And also we have followed in our contact with the customers to develop their reasons for favoring one port as against another. It all might be laid at the beginnings when the ocean—

Mr. Macleay: Mr. Examiner, I am going to move to strike that as being non-responsive.

The Witness: That was the question.

By Mr. Macleay:

Q. No, it was not the question. I asked if you made any comparative studies upon which to base the traffic, which I think is an ordinary statement.

A. Yes, we have, we make them constantly.

Q. Will you give me one example of a study that indicates that the railroads serving the other ports have gained a disproportionate share of traffic? I want to try to discover, if I can, what you consider to be a disproportionate share of traffic.

A. We have recently made a study of grain. We also made a study of machinery. We made a study of grain products.

Q. Is there anything in this record that indicates that, in your opinion, Mr. Baylis?

A. I did not have any testimony or any exhibits of our studies but I have said and say again that we make these all the time. The best recent one happened within the last month.

Q. That is since you made this statement, then?

A. No, we are making them all the time.

[fol. 70] Q. No, but I am trying to find out what it was you based this statement on, not something that you say has happened since.

A. Well, at the time this was written the commodity studies were being progressed the same as they are now. As I remember at this time we had just completed a study on export machinery—farm implements, ~~due to—~~

Q. What did that study show?

A. We made that on direct contact with our own shippers, that used to use the port of New York and no longer were using it. And in every case of diversion we found it due to the disadvantage of New York on export freight rates.

We made studies on the import side on ores, on rubber. In fact, there are very few commodities we haven't studied, and we continue to do it all the time.

Q. I see. Any time you find any traffic is moving through another port you consider that the railroads serving that port has a disproportionate share of the traffic; is that correct?

A. All of this business could be considered as, in any day, any month, or any year, as 100 percent pool of competitive rail tonnage. Unfortunately, the rail size of the pool is not as big as we would like it, and we therefore compare ourselves only with that which is still moving by rail. We ask why it has gone away from New York or Boston, and to other ports. Invariably we find that the difference in the rate is the reason first given.

[fol. 71] Q. Mr. Baylis; you still haven't gotten around to talk about what I asked you about, and that is, what do you consider a disproportionate share of the traffic?

A. A constantly eroding of participation on our part, and a constant growth, commodity by commodity, by our competing railroads serving preferentially the other ports.

Q. All right. Let us refer to Mr. Crookshank's Exhibit 15, which I assume is one of the documents that you had in mind in these various studies. That indicates that from 1939 to 1947 carloads unloaded at New York, other than grain and coal and coke, increased by 216,000. Baltimore's increase in that period was about 34,000. The combined increases of Baltimore, Philadelphia, and Hampton Roads is about 73,000.

Does that indicate to you a disproportionate share of the increase?

A. Mr. Brookshank will explain those exhibits.

Q. I am not asking for an explanation of the exhibit. I am trying to find out where you got the idea of this disproportionate increase, and what it is.

A. I would regard it as a disproportionate increase.

Q. What would you consider to have been a proper proportion of Hampton Roads, Baltimore, and Philadelphia for the increase during that period?

A. All I am saying is it should have been less than it was.

Q. Well, now, let us refer to the last two years that are [fol. 72] shown on that exhibit, Mr. Baylis, 1955 and 1956. That shows that New York's gain in export cars, 1956 over '55, was about 10,000. During that same period Baltimore lost about 1,000 and Philadelphia, Baltimore, and Hampton Roads, combined, lost about 10,000. Do you consider that a disproportionate share?

A. Yes.

Q. Why?
A. Why?
Q. Yes.
A. Because—
Q. New York gained 10,000 and the other ports lost 10,000.
A. I think New York should have gained more than 10,000.

Mr. Macleay: That is all. Thank you, sir.
Exam. Boat: No further questions?
Mr. Langdon: No.
Exam. Boat: That seems to be all, Mr. Baylis.
Mr. Colgren: I have one question on redirect, only.
Exam. Boat: Redirect.

Redirect examination.

By Mr. Cole:

Q. Mr. Baylis, with reference to the lighterage area in New York Harbor that you were queried about: In connection with export-import freight, where in the lighterage limits do the vessels generally dock? A. At piers that are either owned or leased by the steamship lines, using those piers.
[fol. 73] Q. In what location are they?
A. Generally on the Manhattan Island waterfronts or Brooklyn. To some smaller extent on the lower Jersey shores.

Mr. Colgren: That is all I have.

Recross examination.

By Mr. Bongartz:

Q. You would add to it Staten Island, wouldn't you?
A. Yes.

Mr. Colgren: No, sir.
Exam. Boat: No further questions?

Exam. Boat: Did you tender the exhibit?

Mr. Colgren: Mr. Examiner, I tender for acceptance in the record Exhibit identified as No. 1, which is the verified statement of Mr. Arthur E. Baylis, and his accompanying exhibit identified as AEB-1.

Mr. Bongartz: I renew my objection, Mr. Examiner, to the sentence beginning at the bottom of page 11 and continuing through the first three lines at the top of page 12 of Exhibit 1, and also to the first sentence appearing at the top of page 15.

Exam. Boat: That was the subject of your previous motion?

Mr. Bongartz: Yes, sir.

Exam. Boat: With the exception that was indicated in the ruling on the motion?

Mr. Bongartz: Sir?

[fol. 74] Exam. Boat: Do you have something further you wish to add to your statement?

Mr. Bongartz: Well, no, I think not.

Exam. Boat: With the exceptions indicated on the ruling on the motion, the exhibit is received.

(Respondents' Exhibit No. 1, Witness Baylis, was received in evidence.)

Mr. Bongartz: There is one matter that has come to my attention, I think the New York Central would wish to have this corrected.

At the bottom of page 10 of the exhibit attached to Exhibit 1 there are some words missing. I think those missing words should be supplied, as I understand it the missing words are "known, they claimed."

Mr. Colgren: I will accept that, Mr. Examiner.

Exam. Boat: It seems those words seem to be essential to complete the thought. That insertion may be made in the exhibit.

That seems to be all, Mr. Baylis. You are excused.

(Witness excused.)

Exam. Boat: Call your next witness.

Mr. Langdon: Sir, could we adjourn for lunch at this time?

Exam. Boat: I think we might adjourn.

Before we adjourn there seemed to be some persons present who will desire to introduce some testimony in the [fol. 75] form of verified statements. I have one here, styled "Petition of the State of New York," and it is in the form of a verified statement, and I have requested counsel to make these available to other counsel so that they may examine them. This being an I. & S. proceeding, I understand that we will not be able to limit such presentation to evidence that has been exchanged heretofore, but I hope that the evidence that comes in of this nature will be limited.

Mr. Bongartz: You say there was a petition, Mr. Examiner?

Exam. Boat: It is styled a petition, but he wishes to file it as a verified statement. It is verified.

So if there are other statements of this nature that it is desired to introduce I suggest they be made available to counsel here so that we may—

Mr. Bongartz: It is merely a petition for intervention.

Exam. Boat: A petition isn't necessary. But he has also—

Mr. Bongartz: Why should it be labeled as a verified statement when it is merely a petition for intervention?

Exam. Boat: He has indicated this statement is verified.

Mr. Bongartz: Well, all right, under that circumstance we could write a brief and I could put an affidavit on it and introduce it as a verified statement here. It has no place as a verified statement, sir, just looking at it very quickly. The prayer of it asks for leave to intervene and be treated as a party, with the right to notice and taking of testimony, [fol. 76] and so forth. How could you cross-examine a person on a petition to intervene?

Exam. Boat: Well, there are some statements in there that might be considered statements of fact. I think he has a right to file the statement if he wishes to, subject to objection, of course.

Mr. Bongartz: This gentleman is here for cross-examination?

Exam. Boat: I understand that he is; is that correct.

Mr. Tynan: The Attorney General isn't here, himself.

Exam. Boat: Is there someone here ready to stand cross-examination on this?

Mr. Tynan: Not today, if the Examiner please. But I can have the Attorney General here.

Mr. Bongartz: He makes a lot of statements here that are not within the knowledge of the Attorney General.

Exam. Boat: If there are any other such statements, if counsel will make them available to other counsel here I think that can be done, and we will recess at this time until 1:45.

(Whereupon, at 12:25 p. m., a recess was taken until 1:45 p. m. of the same day.)

[fol. 77] AFTERNOON SESSION 1:45 P. M.

Exam. Boat: Show on the record that Mr. Merritt—

Mr. Merritt: Charles Merritt, I filed an appearance.

Exam. Boat: —has tendered the statement of Mr. Lloyd H. Dalzell, a witness on behalf of the Chamber of Commerce of the State of New York. He has tendered the statement in evidence. There is no objection, so the statement will be received and an exhibit number will be assigned at a later point.

Mr. Merritt: Thank you, Mr. Examiner.

Exam. Boat: Mr. Welsh, we will take care of you, then, when we reach you in order.

Mr. Welsh: If that is your pleasure, sir.

Exam. Boat: Let us proceed, then.

Mr. Costello: Mr. Examiner, Mr. Colgren of the New York Central has been delayed a few minutes. His witness is the next witness. I wonder if we can delay the commencement for a few moments? I am sure he will be here very shortly.

Exam. Boat: We might dispose of this other matter, then, in the meantime.

There has been the matter I mentioned just before the lunch period, this matter of the appearance of the State of New York, which purports to be a verified statement.

Mr. Langdon: We have no objection to this if it is received as a petition of intervention, and if the verification part is stricken, or regarded as stricken. If it is [fol. 78] merely tendered as a petition of intervention and received as such we have no objection to it.

Exam. Boat: It doesn't require a petition of intervention in an I. & S. proceeding, Mr. Langdon.

Mr. Langdon: Then there is no point to the paper at all.

Exam. Boat: It is a statement of position, that is all it is. We can receive it as such. Do you object to it being received as that?

Mr. Langdon: I would like the verification stricken.

Exam. Boat: Is that agreeable?

Mr. Tynan: That is agreeable, Mr. Examiner. I would like to strike from the petition the last four lines on page 4 and the first three lines on page 5, and for the purpose of accuracy I would also like to have paragraph VIII stricken.

I offer this as a statement of position, not as evidentiary matter.

Exam. Boat: Very well. Thank you, sir.

There being no objection to its receipt in that manner, the statement is received as a statement of position.

Mr. Welsh: Are we off the record, sir?

Exam. Boat: Yes, we can go off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Welsh: I call Mr. D. J. Speert.

D. J. Speert was sworn and testified as follows:

[fol. 79] Direct examination.

By Mr. Welsh:

Q. Mr. Speert, I hand you a document that is described as prepared testimony of Witness D. J. Speert for the Brooklyn Chamber of Commerce, and ask you to examine it.

A. I have.

Q. Are you the same D. J. Speert described in the title page of that document?

A. I am.

Q. And are you familiar with the contents of that document?

A. I am.

Q. Is the contents thereof true, to the best of your knowledge and belief?

A. It is.

Mr. Welsh: That is all.

Exam. Boat: Do you wish to tender the statement in evidence?

Mr. Welsh: I will offer it. I will now offer Mr. Speert's verified statement, it now becomes a verified statement.

Exam. Boat: I understand, Mr. Welsh, that the request for cross-examination of this witness has been waived, and there being no objection to the statement it will be received in evidence, and I will assign an exhibit number to it when we reach that stage in the order of witnesses.

Mr. Welsh: Very well.

(Witness excused.)

[fol. 80] Exam. Boat: May we go ahead now?

Mr. Colgren: Mr. Examiner, at this time I would like to present Mr. Arthur J. Crookshank, for cross-examination, and I hand the reporter the original of his verified statement and exhibits identified as AJC-1 through 15.

Arthur J. Crookshank was sworn and testified as follows:

Cross examination.

By Mr. Langdon:

Q. Mr. Crookshank, may I ask you a few questions about your Exhibits AJC-4 and 6?

A. Yes, sir.

Q. AJC-4 deals with import traffic, and on page 1 and page 2 you make certain deductions for iron ore and petroleum products.

A. Yes, sir.

Q. Now, on page 3 of your exhibit would you say that the figures there shown represent general import traffic, or would it be necessary to make further exclusions in order to get those figures down to the point where they would reflect general traffic, as opposed to bulk traffic?

Exam. Boat: Before he answers, may I interrupt, please?

(Discussion off the record.)

[fol. 81] Exam. Boat: On the record.

By Mr. Langdon:

Q. Did you understand my question, Mr. Crookshank?

A. I would like to have it restated, Mr. Langdon, because of the interruption.

Exam. Boat: The reporter may read it, unless you wanted it restated in a different method?

The Witness: No, no.

Mr. Langdon: Read it, then, Mr. Reporter.

(Question read.)

The Witness: These figures, Mr. Langdon, are taken from the Corps of Engineers' figures and they include all traffic.

By Mr. Langdon:

Q. Well, a general traffic or all general traffic plus some bulk traffic, other than the bulk of traffic which you have excluded, namely, petroleum products and iron ore?

A. No. I understand that they include all traffic except iron ore and petroleum.

Q. And that would include, then—I am speaking now of the figures on page 3—that would include some bulk tonnage, would it not?

A. Yes, sir. There would be bulk tonnage in there, such as chrome, manganese ore, and so on, in bulk.

Q. Have you consulted the separation between general traffic and bulk traffic that is set forth in Witness Gilbert's [fol. 82] exhibit, Witness Gilbert being for the Port of New York Authority?

A. No, sir.

Q. You haven't seen that separation?

A. No, sir.

Q. Would you agree on the import traffic, in order to limit it, now, to general traffic, that other ores, aside from iron ore, should be excluded?

A. Well, when we assembled these figures and took them from the Corps of Engineers, we separated iron ore and petroleum for two reasons; first, dealing with iron ore, we separated that because on the import iron ore it is being handled separately. The equalization is before the Commission and the courts. We didn't think it was a part of this case. And in the case of petroleum most of the petroleum imported is consumed right at the ports. It doesn't move, with very little exception, a distance, it is consumed right here. There is little or no movement into the territory we are talking about.

Q. Now, Mr. Crookshank, would you be good enough to answer my question? Will you go back and read it, Mr. Reporter?

Exam. Boat: That is, the original question?

Mr. Langdon: No, the question whether or not in the order to—

Exam. Boat: The last question that you put?

Mr. Langdon: Yes, the last question.

(Question read.)

[fol. 83] The Witness: Well, as I understand your question, you are asking me whether other ores, excluding iron ore, should be excluded from this exhibit. The answer is no.

By Mr. Langdon:

Q. In order to produce a figure representing general traffic:

A. I don't think so. It should be included, and is included.

Q. Included in what, Mr. Crookshank?

A. In these figures.

Q. Do you regard chrome ore and manganese as constituting general import traffic?

A. Yes, sir.

Q. Isn't it bulk traffic?

A. Yes, sir.

Q. Do you, as a traffic man, distinguish between general traffic and bulk traffic?

A. No, I do not.

Q. Do you distinguish between bulk traffic and dry cargo?

A. Well, naturally, there is a difference, certainly.

Q. Would chrome and manganese constitute general cargo?

A. I have seen some vessels that had a part cargo which was chrome ore and had other general cargo in it.

Q. It isn't regarded as general cargo, though, is it?

A. No, sir.

Q. Have you any figures—this is dealing now with imports, Mr. Crookshank—which undertake to compare the [fol. 84] flow of general cargo through the North Atlantic ports, as opposed to total traffic through the ports?

A. Yes. We have made some studies.

Q. Those figures aren't in any of the your exhibits, are they?

A. No, sir.

Q. Now turn to Exhibit 6. This exhibit deals with exports; is that correct?

A. Yes, sir.

Q. In which you say that after you had eliminated coal and grain, that the figures representing the balance on page 2 of his exhibit represented general cargo?

A. Yes, sir.

Q. You wouldn't regard it necessary to make any further exclusions in order to eliminate any further bulk traffic from those figures?

A. I don't know of any.

Q. And those figures, in other words, to make sure that we are talking about the same thing here, for New York, 1955, of 8,201,504 tons represents, in your mind, general export cargo through New York Harbor; is that right?

A. Yes, sir. There is some correction that should be made on that Exhibit No. 6. I presume you have those.

Exam. Boat: Yes.

The Witness: On page 2.

Mr. Bongartz: Also on page 1, the pencil corrections that [fol. 85] were made just before they were distributed?

The Witness: Yes, sir, there are some corrections.

Mr. Bongartz: They were made?

The Witness: Yes, I think so.

Mr. Colgren: Yes.

By Mr. Langdon:

Q. Now, again dealing with export traffic and limited to general traffic—general cargo; what, Mr. Crookshank, is your testimony as to New York's share of that general cargo traffic, comparing now the North Atlantic ports only, in the latest figure that you have? A. I don't understand what you mean by the word "share".

Q. Well, proportion.

A. I don't understand that.

Q. You mean to say that you can not—how do you define "proportion", Mr. Crookshank?

A. I define a proportion in this way, when it comes to the share of the traffic: If I have a shipper on our railroad who is located in the so-called affected territory, and my port for export is New York, but because of the differential now existing between New York, Baltimore and Philadelphia, nothing less than 100 per cent is my share.

Q. You mean you are satisfied with the differential in those instances where you get 100 per cent of the competitive traffic?

A. I said that you asked me for a definition of a proportionate share, and if I have a shipper that I serve and [fol. 86] I can't receive 100 per cent of that business for export through the Port of New York because of the differential, then I am not getting my share.

Q. Is that your objective, to get 100 per cent of the business from the shippers that you serve?

A. That was my objective when I was out selling freight service, yes, sir.

Q. Is that your objective in this case?

A. My objective is to have the opportunity to get it, yes, sir.

Q. And I take it that same observation would go in regard to your import traffic; is that right?

A. Yes, sir.

Q. You refer, at page 1 of your testimony, to the fact that this rate adjustment was first presented to the traffic executives in June of 1955; is that correct?

A. Yes, sir.

Q. Now, at the time that that rate proposal was submitted, I take it from the testimony of Mr. Baylis this morning that there had been no investigation by your road, or any other roads friendly to your cause, as to the cost of transportation involved in moving this traffic; is that correct?

A. Mr. Baylis said that? If he said that, that is true.

Q. Now, at the top of page 26 you refer to your investigation as to the reasonableness and compensatory level of the rates herein involved. What was your investigation, Mr. Crookshank?

[fol. 87] A. My investigation was the study of the traffic that was moving to and from affected territory, from the several States involved, and using samples from each State, the revenue that was earned on this import and export traffic, and then I compared that with our overall average of traffic, and as Mr. Baylis said this morning, with the general level and measure of the rate this traffic, in my opinion, is compensatory.

Q. Is it your definition of a compensatory rate a rate that produces revenues that are comparable to the revenues produced by some other rate? Is that your definition of a compensatory rate?

A. Well, my definition of a compensatory rate is this: If your net figure at the end of the year is showing a deficit, then all of our rates are noncompensatory. It has to be.

Q. Is that true today on the New York Central, then, that these rates that you are presently handling the export-import traffic on, are non-compensatory?

A. I didn't say that. I said in my verified statement, in my opinion, the export and import rates are compensatory.

Q. For what reason?

A. I gave you the reason, Mr. Langdon.

Q. Because the revenues produced under those rates are comparable to the revenues produced by some other rate or rates; is that your reason?

A. No. I didn't say that at all. The answer is no.

[fol. 88] Q. Then what is your reason?

A. In the measure of the rate, throwing everything into the pot of soup, so to speak, when we come up with an average revenue per car per ton, or per ton-mile, these rates, in my opinion, are compensatory.

Q. You don't undertake, then, in reaching the conclusion that these rates are compensatory, to assign any expenses to this particular traffic; is that right?

A. I have not said anything about costs in this testimony, and I am using my opinion on the basis of all rates, generally speaking, the level of rates, these rates are compensatory.

Q. Mr. Crookshank, do you know what an out-of-pocket cost level is?

A. Yes, sir.

Q. What is an out-of-pocket cost?

A. An out-of-pocket cost is the cost of handling traffic above the rail.

Q. Above the rail?

A. Yes, sir. That is my own definition.

Q. Is it your idea that the more traffic you handle, the less your out-of-pocket costs per unit are?

A. Yes, sir.

Q. How do you define, Mr. Crookshank, the cost that varies with the traffic? What do you call that?

A. Well, naturally, if I handled a trainload of freight [fol. 89] with a crew from any given point, the more tonnage I had in that train the lesser my out-of-pocket cost would be, or the higher the net would be for me. It costs more money, in other words, to handle one carload of freight than it does a hundred. We know that.

Q. Just to make sure that this record is clear—

Mr. Colgren: Mr. Examiner, I am afraid I will have to object. We are again pursuing this question of costs. The witness has not testified as to costs. He has given the results of comparisons shown on his pages 26 and thereafter, which are valid comparisons of ton-mile and car-mile earnings, in which he took the lowest rated commodities which were moving in the affected traffic zone that we are here considering, and illustrates thereby the fact that they re-

turn what are, by recognized standards, ample revenues to justify his conclusion that they are compensatory.

Now, I think this inquiry into costs is beyond the scope of his direct testimony, and is objectionable for that reason.

Exam. Boat: You hadn't finished your question, Mr. Langdon?

Mr. Langdon: No, but I would like to deal with his objection, if you don't mind, at this point. This witness, like the preceding witness, has said that he regards these rates as compensatory, and this witness, as distinguished from the prior witness, said he made an investigation as to the reasonableness and the compensatory level of the rates here involved.

[fol. 90] Certainly I am entitled to inquire as to what that investigation consisted of, and that is the purpose of my questioning.

Mr. Colgren: I think, Mr. Examiner, it is clearly stated on page 26 of the witness' direct testimony as to how it was—

Mr. Langdon: Of course, Mr. Examiner, there is one test, and only one test, of whether a rate is compensatory, and that is: whether the revenue exceeds the costs.

Mr. Colgren: Mr. Examiner, I must object to that statement of opposing counsel. It is not a true statement.

Mr. Langdon: Well, it is so true that I am flabbergasted, frankly, that any counsel in this room should question it. That is the starting point for determining whether a rate is compensatory, how do the revenues compare with the expenses, that is the beginning point. If, later, they want to go ahead and compare the revenues under these proposed rates with revenues under some other rates that they regard as reasonable, whether the service is the same or not, that is a refinement, but it has nothing to do with the basic test. I move, then, that this portion of the—

Exam. Boat: I haven't ruled on the objection yet. You were questioning the witness as to the basis for his conclusions that you referred to in the statement, I believe, Mr. Langdon.

Mr. Langdon: The conclusion, sir, is on page 30.

Exam. Boat: Yes, on page 30.

[fol. 91] Specifically, you referred to one sentence there, but which is the particular one you have in mind now?

Mr. Langdon: I have in mind the exclusion on page 30.

Exam. Boat: "I believe I have established my point"; is that it? Is that the conclusion?

Mr. Langdon: Yes, sir.

Exam. Boat: You were pursuing a line of questions there which seems to develop what was considered in arriving at that conclusion.

Mr. Langdon: Yes, and the one element that should have been considered and is implied when you use the word "compensatory" apparently wasn't considered; namely, the cost of transportation. Everything else is superfluous.

Exam. Boat: I overrule the objection to the extent that you are trying to develop just what was considered as a ground for that statement. I think you have a perfect right to ask that question.

By Mr. Langdon:

Q. As I take it, Mr. Witness, the only investigation you made as to the compensatory level of these rates, from which you draw the conclusion that all of the rates under your proposal are compensatory, is an investigation of the revenues produced by these rates as compared with the revenues produced by other rates; is that right?

A. That is right. That is right. I have made no comparison of costs.

[fol. 92] Q. What other rates did you take into account when you compared the revenues arising under these proposed rates? What other rates did you take into account?

A. Well, dealing first with imports, taking the sample of 2,563 carloads of freight—

Mr. Bongartz: Are you looking at an exhibit?

The Witness: No, this is my own work sheet—that traffic was destined into the affected territory of Ohio, and includes all classes of import traffic other than iron ore.

Mr. Colgren: Mr. Crookshank, are you sure you understood the question?

The Witness: I thought I did. He wanted to know how I arrived at it. I was trying to tell Mr. Langdon how we arrived at my thinking, that is all.

Mr. Colgren: I think he asked for a comparison.

By Mr. Langdon:

Q. How are you comparing the revenues that arise under these proposed rates with or against—what revenues arising under some other rates apparently are you making these comparisons on?

A. I am making the comparisons on the import and export traffic—

Exam. Boat: The whole body?

The Witness: The whole body of the import and export traffic, compared with everything that we handle on the New York Central Railroad—everything thrown in.

[fol. 93] By Mr. Langdon:

Q. Where does that show in your exhibit?

A. It is not in the exhibit. You asked me how I compared it, and I did, and when I was finished I made the statement that I thought they were compensatory, in my opinion.

Q. And your conclusion is based on the point that the revenues arising under these proposed rates are in excess of the revenues arising under the average rates on the New York Central; is that the basis of your conclusion?

A. About double, as Mr. Baylis testified this morning.

Q. There was no effort at all made to determine the differences in service involved in handling this export-import traffic and the average service that is involved in handling traffic on the New York Central?

A. No, sir, I made no comparison, I did not take that into account.

Q. Service is immaterial, apparently, as an element in arriving at whether a rate is compensatory?

A. Using the average, that is the way, in my opinion, it worked out.

Q. On page 14, Mr. Crookshank, I am referring now to the first complete paragraph on that page, the last sentence, starting "It should be obvious that without complete data as to the rail tonnage through the several ports affected, that it would be impossible at this time to properly evaluate the relationship of the volume of traffic moving in rail service, one port compared with another." Do [fol. 94] you follow that?

A. Yes, sir.

Q. What does that mean?

A. Well, it means this: In our traffic study of the tonnage moving through the ports of Albany, New York, Boston, and Portland, at New York we do not have the tonnage the way it was compiled of the Pennsylvania, the Baltimore and Ohio, and the C&J.

Q. So that you didn't have the information on which to make a study which would enable you to evaluate the relationships?

A. Not at that time, no, sir. We didn't have any information as to the traffic that was handled by the other New York port lines until after our exhibits had been filed and the opposition to the relationship filed their exhibits, we didn't know what these expenses were.

Q. Since you received the traffic study of the lines opposed to equalization, have you undertaken to put together the results for the common year shown in both your exhibits and our exhibits?

A. Yes, sir.

Q. Have you done it by commodities?

A. Yes, sir.

Q. Have you broken out the percents that each port handles of each commodity?

A. I believe we have. Yes, sir.

Q. Will you turn to your consolidation representing ex- [fol. 95] port tonnage? Have you got that?

A. What exhibit, my own?

Q. You said that you had consolidated the figures.

A. Oh, yes, sir.

Exam. Boat: Have those figures been exchanged?

Mr. Langdon: No, apparently this is a study—

Exam. Boat: Made subsequent to the time to file the statements?

Mr. Langdon: Yes.

By Mr. Langdon:

Q. Have you got the commodities broken down on your study, Mr. Crookshank, from the point of view of New York's participation, commodity by commodity?

A. No, sir.

Q. Have you listed—

A. We compared the tonnages, Mr. Langdon, affected-unaffected, four ports versus the three ports in the total. That is the way we did that. I haven't separated New York.

Q. It would be perfectly possible, wouldn't it, on the basis of your traffic study for the fiscal year, as you call it, '55-'56, together with our traffic study, to put together a consolidation, commodity by commodity?

A. Well, we did that, but we included the Port of Albany with New York, Boston, and Portland. We didn't separate the Port of New York from the other ports because the equalization involves all ports.

[fol. 96] Q. Do you have a list of the commodities—export commodities—where New York handled 100 per cent of the traffic shown in both studies?

A. One hundred percent of what?

Q. Of the traffic moving in these particular commodities.

A. Oh, no. I understand what you mean. You are talking about rubber, as an example, where New York handled it all and the other ports didn't handle any?

Q. Yes. You didn't make any such list?

A. No, sir.

Q. Do you know of some commodities where New York handled 100 per cent of the export traffic?

A. Export?

Q. Yes.

A. I imagine there are some.

Q. Quite a long list, aren't there?

A. Yes, sir.

Q. That, I take it, is a proper proportion of the traffic for New York?

A. One hundred per cent. That is very good proportion.

Q. Did you make a list of the commodities at New York where you handled over 90 per cent of the traffic, by commodities?

A. Your question was 99 per cent?

Q. Well, I will revise it, yes, 99 per cent—I said over 90, actually.

[fol. 97] Mr. Colgren: Mr. Witness, are you sure you understand the question? You aren't referring to a paper that will give you the answer, that is the reason I asked.

The Witness: No, I am just looking at my own work sheets.

Mr. Colgren: Are you sure you understand the question?

The Witness: Yes, I understand the question.

I don't know, Mr. Langdon, of any of those commodities. I know New York is the favorite port on some commodities, exported and imported.

By Mr. Langdon:

Q. A great many commodities, isn't that right, Mr. Crookshank?

A. No, I wouldn't say a great many.

Q. A great majority?

A. Not a great majority.

Q. Is it your testimony you don't handle in excess of 50 per cent of the majority of the items moving in export commerce?

A. That could be a true statement. I am not familiar with the actual percentages of all commodities that are imported and exported.

Q. Mr. Crookshank, Mr. Gilbert, I believe, of the Port Authority, has some figures in his exhibit which he says were given to him by the railroads, which is not identified yet, but it is identified on this sheet as JD-13. Are you familiar with those figures?

A. No, sir.

[fol. 98] Q. Did you give the Witness Gilbert any figures having to do with the movement of rail traffic through New York?

A. I think Mr. Gilbert had the benefit of all the figures that we made that are in my exhibit.

Q. Did he have any figures for '56?

A. The entire year '56?

Q. Yes.

A. Not that I know of.

Mr. Colgren: Mr. Examiner, I think that question should be directed to Mr. Gilbert.

Mr. Langdon: I want to find out what these railroads gave Mr. Gilbert, that is the reason I am asking.

Mr. Colgren: Then let's ask Mr. Gilbert.

Mr. Langdon: Well, the donor might be on the stand at the moment. It appeared to me he might be the proper one to ask about that. These figures refer to a source, records of New York Central Railroad, Delaware, Lackawanna and Western Railroad, Lehigh Valley Railroad, and Erie Railroad.

By Mr. Langdon:

Q. You know nothing about them?

A. The annual report is available to everybody. The figures are in the annual report, whether we gave it to them or not. They are public information. I didn't give them to them first.

Q. Do you put in your annual report import and export traffic to and from the affected territory?

A. No.

[fol. 99] Q. Then the figures are not in your annual report, are they?

A. I thought you were speaking of the entire figures.

Q. Look at Witness Gilbert's exhibit. Do you recognize those figures?

A. I don't recognize the figures, but generally speaking, I know that in the year 1956, from my own information, we handled about 1,700,000 tons of export and 411,000 import, those figures are all right, Mr. Langdon. I know that that is about the average and the percentage of import versus export that we handled. It does not fluctuate that much from year to year, but I know those figures would be all right. But I didn't give them to him.

Q. Did you make any study for the year—the calendar year 1956, of export-import traffic moving to and from affected territory?

A. No, sir. I don't know whether those are the four roads or not, Mr. Langdon, but I do have the figures that I made a note on here this morning. For the period of August 1, 1955, July 31, 1956, the New York Central's import traffic for the period that these exhibits are made

over, most of them, was 778,380 tons, and the export was 1,050,522 tons, and the total import and export traffic to affected and non-affected territory on the New York Central was 1,828,000 tons.

Exam. Boat: Was that the period you used generally?

The Witness: That was the period we used generally [fol. 100] for all of our study, yes, sir.

Mr. Langdon: I guess that is all.

Mr. Bongartz: I have a few questions.

Cross examination.

By Mr. Bongartz:

Q. Did I understand you to say, Mr. Crookshank, that last year the New York Central lost money in all of its operations?

A. I didn't make any statement like that.

Q. What did it do last year?

A. I don't know that. All operations I am not familiar with, no, sir.

Q. What did the New York Central do last year? What was the result of last year?

A. We had a very bad year.

Q. What were your figures? What was your net railway operating income last year?

A. I don't have those figures in front of me.

Q. What was your net income last year?

A. It wasn't enough.

Q. What was it?

A. I can't quote it. It was somewhere around six million dollars.

Q. Wasn't it around $8 million last year?

A. None of which was from railway operation.

Q. Well, was your revenue from railway operation a deficit?

[fol. 101] A. Yes, sir.

Q. Last year?

A. Yes, sir.

Q. That was the overall operation?

A. Yes, sir.

Q. What was your passenger deficit last year?

A. I haven't any idea. I have nothing to do with passenger.

Q. You, as an officer in the Freight Traffic Department of the New York Central, are not interested in the passenger results?

Mr. Colgren: I think the witness has answered.

Mr. Bongartz: Let him answer that question that I have just asked him.

Mr. Colgren: What has it to do with this case?

Mr. Bongartz: It has a lot to do with it, if you let me pursue my examination of the witness.

By Mr. Bongartz:

Q. Can you answer that question?

A. No, sir.

Q. Do you know in the year 1957 your passenger deficit consumed about 62 per cent of your freight revenues?

Mr. Colgren: The witness has already said he doesn't know.

By Mr. Bongartz:

Q. I am asking if he knows that.

A. No, sir, I don't know.

Q. In view of your lack of knowledge on these matters, how can you testify regarding the compensatory character of a rate when you say, as I understand your testimony, [fol. 102] that where you were losing money on all traffic, why, necessarily, some of it must be compensatory?

Mr. Colgren: Mr. Examiner, I either ask the question be rephrased or withdrawn.

Exam. Boat: I don't believe it is a clear-cut question. Will you read it, Mr. Reporter?

(Question read.)

By Mr. Bongartz:

Q. Let me put a question to you this way: When you state that the rates here under consideration are com-

pensatory, can you find any support in that statement from the fact that the New York Central had an overall loss last year?

Mr. Colgren: I don't think the question necessarily helps the premise. It is not a clear question.

Mr. Bongartz: What is unclear about it?

Mr. Colgren: Your question doesn't follow the premise.

By Mr. Bongartz:

Q. Is it clear to you, Mr. Crookshank, after all this colloquy?

A. I made no statement in my verified statement about the passenger deficit. I made no statement whatever about the New York Central earnings in 1957, and I thought I explained my position to Mr. Langdon of how I arrived at what I thought was a compensatory rate.

Q. Well now, as I understand your testimony in that regard, it was to the effect that in comparing the earnings [fol. 103] on this traffic of the New York Central, such earnings compared favorably; is that correct?

A. Yes, sir.

Q. And yet, as I understand your testimony, the New York Central had an overall loss; is that right?

A. Not entirely an overall loss. We had a very meager net income.

Q. Yes, but you said your net income didn't come from freight traffic?

A. I didn't say that at all.

Q. I think the record will speak for itself on that. Now, in these earnings figures that you show in your statement, you base them all on short-line distances; is that correct?

A. Where are you referring, sir?

Q. From page 26, on. Aren't all those earnings shown there based on short-line mileages?

A. They are average mileages.

Q. Why did you say short-line mileages?

A. Where did I say short-line mileages?

Q. All right, let's look at your statement here. Take page 27. Short-line distances; do you see that in the last paragraph there, up at the top of page 28, the third line, "short-line distances"; do you see that?

A. Yes, sir.

Q. I don't know what it is, when you get to 29, you just [fol. 104] talk about distance; is that short-line again?

A. Well, that is what we used.

Q. Short-line distance?

A. Short-line distances.

Q. Short-line distances?

A. Yes.

Q. Not the working route distances?

A. No, sir.

Q. It would be longer, wouldn't it?

A. For our account it would be.

Q. If you used the working route distances, your earnings would be lower than are shown here; is that correct?

A. Yes.

Q. On page 4 of your statement you say eventual equalization is intended to cover all territory to and from which the differentials have been maintained; in other words, your purpose here, eventually, if you are successful here, is to extend this equalization to other origins and destinations than just those in so-called differential territory; is that right?

A. Well, we would probably—I haven't decided that.

Q. Why did you say it?

A. I was speaking for the committee in general, for whom I am testifying.

Q. Aren't you a part of the committee?

A. Yes, sir.

[fol. 105] Q. It is your intention, isn't it?

A. Yes, sir.

Q. What I said was right, wasn't it?

A. Yes, sir.

Q. This Exhibit AC-4, just so I can understand it, this total volume of import tonnage handled at North Atlantic ports, as you show it here on these three sheets, is regardless of destination; is that correct? It is all of the import handled through these North Atlantic ports?

A. No. This is only—

Q. Only what?

A. These are the Engineers' figures. Yes, sir, that is all traffic.

Q. Yes. In other words, traffic—

A. We haven't separated them, no, sir.

Q. Traffic destined to some point in New Jersey, or traffic destined to a point beyond differential territory?

A. That is right, you are right.

Q. Any and all traffic?

A. We haven't separated it.

Q. Right. I just wanted to be clear on it. And it includes traffic handled by rail, traffic handled by truck, traffic handled by canal boat, any means of transportation?

A. Yes, sir, that is correct. There is no separation made in those figures. We took them as they were.

[fol. 106] Q. I just wanted to get that clear. That is likewise true when you talk of export traffic, isn't it?

A. Yes, sir.

Q. Going the other way?

A. The same thing.

Q. I don't know whether Mr. Langdon asked you this question, but I want to ask it so I will be clear in my own mind. Iron ore is not in this case; is that correct?

A. That is correct. Iron ore is not in our figures.

Q. It is not an issue in this case?

A. That is right. We would like to have equalization on iron ore.

Q. I don't know whether, due to the circumstance of your answer to my question, it is necessary to correct you on your statement. You have here it is not subject to the Philadelphia rate basis.

A. That is right.

Q. It is subject?

A. No, sir.

Q. It is not, in your opinion?

A. No, sir. They didn't put it on that basis, they put it on a different basis.

Q. Due to the fact it is out of this case; I won't argue. At page 13, Mr. Crookshank, when you talk about combined rail and ocean distances which, after you mention them, you [fol. 107] say have little significance; you say that in many instances a steamship line sailing from the North Atlantic port touches at one or more of the remaining ports before

finally sailing for the foreign destination or destinations. Do you see where I mean?

A. Yes, sir.

Q. You are pretty familiar with that situation, are you?

A. No. That is my understanding, but I must admit I am not familiar with where every boat goes to before it takes off for Europe, or vice versa.

Q. Are you familiar with the fact that in most instances New York is the last stop before the boat takes off?

A. On export?

Q. Right.

A. I presume that is right.

Q. It is the first stop on import?

A. I don't know about that. I would think that would depend on what the cargo is.

Q. Do you think that Albany will have equal opportunity with New York if equalization is brought about?

A. I didn't hear you, Mr. Bongartz, I am sorry. Do I think Albany what?

Mr. Bongartz: Will you read the question?

(Question read.)

The Witness: On certain commodities, yes, sir.

By Mr. Bongartz:

Q. What are those?

[fol. 108] A. Grain, principally.

Q. Is that ex-lake?

A. Not all of it.

Q. Some of it is?

A. Some of it is, yes, sir.

Q. You talk about Great Lake tonnage. What do you know about Great Lake tonnage via motor? You talk about the water competition of the vessel lines presently serving the Great Lakes ports. What are you talking about there? What does that tonnage amount to?

Mr. Costello: What page is that, Mr. Bongartz?

Mr. Bongartz: Page 24.

The Witness: In the last paragraph on page 24?

By Mr. Bongartz:

Q. Yes.

A. Well, we are talking here—I am talking here about the competition that we have in the differentials today, plus the competition we are now finding ourselves confronted with on four foreign flag vessels that are coming into the ports of Chicago, Toledo, Cleveland, taking our export cargo, such as lard, packinghouse products, machinery, going through the Welland Canal.

Q. How much of it is there?

A. I haven't any figures, Mr. Bongartz, to give to you, but it is substantial, because many of the steamship lines plying from Philadelphia, Baltimore and New York have [fol. 109] complained to us, wanting adjustment in the rates, particularly during the open season of navigation on the Lakes to help them try to secure some of this business back. We have been approached by the President of Moore-McCormack, and so on.

Q. What is the present tonnage of the vessels using the St. Lawrence Canal going to the Great Lakes?

A. I don't know.

Q. They are pretty small vessels, aren't they, Mr. Crookshank?

A. Oh, certainly, they are small vessels. I don't know what the capacity is in tons. I don't think there are very many of them are [sic] are over five, six, seven thousand tons.

Q. Five, six or seven?

A. I say I don't know.

Q. Do you know they are around three or four?

A. I said I don't know.

Q. You just don't know?

A. They are still foreign flags, and they are still taking tonnage.

Q. You could have a row boat with a foreign flag on it?

A. It won't hold a carload of freight.

Mr. Bongartz: That is all.

Exam. Boat: Are there any further questions?

Cross examination.

By Mr. Macleay:

Q. Mr. Crookshank, isn't the greater part of your export traffic to and from the differential territory passing [fol. 110] through or near Albany?

A. Yes, sir.

Q. What proportion of it is actually exported or imported through Albany, as compared to New York?

A. Very small percentage.

Q. What is the inland rate differential to and from Albany, as compared to New York?

A. Well, Albany, as far as Albany is concerned—and most of the traffic that moves through Albany—

Q. Will you just answer my question, please, Mr. Crookshank?

Mr. Macleay: May I have the question read, Mr. Examiner?

Exam. Boat: Please read the question.

(Question read.)

The Witness: Albany has the same rates as Philadelphia on export grain, and their—

By Mr. Macleay:

Q. On grain only, Mr. Crookshank?

A. Beg pardon?

Q. On grain only?

A. Everything.

Q. What is that differential, under New York?

A. One-half cent.

Q. What is it on other commodities?

A. It is the same. You mean on other commodities, other than grain?

Q. How much is it on grain, did you say?

[fol. 111] A. One-half cent.

Q. And how much is it on other commodities?

A. Two cents.

Q. How far is it from Albany down to New York, via your line, Mr. Crookshank?

A. Approximately 145 miles.

Q. Can you explain why it is that the shipper pays you a differential over the Albany rate in order to haul it that additional mileage into New York for export, rather than export it through Albany?

A. I think those rates were prescribed by the Commission.

Mr. Macleay: Will you please read my question, Mr. Reporter?

The Witness: The grain was—

(Question read.)

The Witness: I misunderstood your question, I am sorry. The reason for that is because the steamers don't go to Albany. We have to come down, or even the shippers have to come down to New York for their freight for export. The same thing applies to import.

By Mr. Macleay:

Q. It is largely a matter of ocean service, isn't it, Mr. Crookshank?

A. Yes, sir, that is right.

Q. The shipper pays you an additional two cents because of the better service at New York; isn't that correct?

A. I don't know whether it is better service. Because of [fol. 112] more frequent sailings, that could be considered service, yes, sir.

Q. That is right. Then this matter of the inland differential is not all-controlling in the movement of traffic for export and import; is it, Mr. Crookshank?

A. No, sir.

Q. Would you say that those same considerations affect the shipper when he routes the traffic via your line into New York from differential territory in preference to routing it to Philadelphia at two cents less?

A. Yes. The same thing applies on certain commodities, whether they are import or export. There are reasons for it.

Q. That applies to a great many commodities, doesn't it, Mr. Crookshank?

A. I don't think it is a great many. It applies on certain commodities, yes, sir.

Q. As a matter of fact, so far as general cargo is concerned, it applies on enough traffic to get New York more than the so-called differential ports put together, doesn't it, Mr. Crookshank, according to your figures?

A. Yes, sir.

Mr. Macleay: That is all. Thank you.

Cross examination.

By Mr. Walker:

Q. Does the New York Central make a practice of soliciting freight on rates that are non-compensatory?

A. We try to keep all of our salesmen—you said soliciting [fol. 113] freight—we try to inform all of our salesmen of complete information so that they will spend more time soliciting higher-rated freight than lower-rated freight. We inform them each and every month—and I am not separating export and import, I am taking the traffic on the whole, whether it would be refrigerators or postholes, we keep our salesmen informed of the high-rated traffic, so that he knows that in some cases one carload of freight—as an example, one carload of wine coming to New York is worth ten carloads of sugar beets. We do. We don't have our men spend the same time calling on the trade, soliciting freight, trying to sell our services on traffic that is not compensatory.

Q. Would you tell him to solicit freight when you know the rates are not compensatory?

A. I wouldn't.

Q. Does he do it, do you know?

A. Sir?

Q. Would he normally do it?

A. Oh, I imagine we have some people that wouldn't know the difference between a carload of freight that was a good carload of freight and some traffic that isn't so good. We all have those kind of men in the field.

Mr. Colgren: I think this line of questioning is argumentative and speculative.

Mr. Walker: That is all.

[fol. 114] Exam. Boat: Is there any further cross?

(No response.)

Exam. Boat: Any redirect?

Mr. Colgren: I have a couple on redirect, please.

Redirect examination.

By Mr. Colgren:

Q. Mr. Crookshank, would you refer to that working paper which showed a consolidation of the traffic moving through New York, as shown by the respective parties to this case, rail traffic, and indicate, if you will, those commodities and the quantities which moved one hundred per cent through New York?

Mr. Langdon: Excuse me, off the record.

(Discussion off the record.)

Exam. Boat: On the record.

The Witness: Were you talking about import or export?

By Mr. Colgren:

Q. Both.

A. These are the figures we compared with the four ports and three ports after we had the opposition's information. Now, if you will give me the commodity, I will see if I can find one.

Q. No, I don't think that will give you the information.

A. It doesn't show, this being equalizing of four ports, we didn't show it, no, by separating New York from the rest. We included the traffic of all four ports. Here is one, as an example—

Q. Excuse me—

[fol. 115] A. —of what I was referring to.

Q. Excuse me, Mr. Crookshank, let's keep the record

straight. The work paper you have there does show the consolidation of New York, as I indicated in my previous question.

Now, presumably if 100 per cent of the traffic moved through New York, it would be shown as 100 per cent through the four ports?

A. That is correct.

Q. Would you mind reading the commodities and the tonnages which show as moving 100 per cent through the four ports?

A. Yes, sir. Here is one. Sulphur.

Q. And the quantity?

A. 62 tons, via the four ports; none via the three ports. That is, to affected territory, and that is all we are talking about here.

Q. That is right.

A. Now, the other one is—here is one, copper ingot, 24,084 tons, which is 100 per cent. The next one is ammunition and explosives, 100 per cent via the four ports, 39 tons. No tons via the three ports south of New York.

Those are the only import tonnages that I compare.

Q. Mr. Crookshank, will you read the heading of that working paper for me, please?

A. "Import Tonnages in Lots of 10,000 tons or more Handled Through North Atlantic Ports, August 1, 1955, [fol. 116] Through July 31, 1956."

Q. Have you any idea what the total traffic shown on that working paper represents of the total traffic moving in import and export traffic?

A. No.

Q. Let me put it this way: Does that working sheet represent the majority of the traffic moving in import and export?

A. This is traffic that moved, the import tonnage that moved through the North Atlantic ports.

Q. In lots of 10,000 tons or more?

A. In lots of 10,000 tons or more.

Q. You have read to me the import traffic?

A. Yes.

Q. Would you mind referring to the sheet of export traffic? Will you now read to me the commodity and the

quantity which moved through the four ports, 100 per cent through the four ports?

A. This is export tonnage. The first one I come to is oranges and grapefruit.

Q. And the tonnage?

A. 41 tons. The next one I come to is flaxseed, 63 tons.

Mr. Macleay: Mr. Examiner, may I inquire for clarification? I thought the witness said all of this is limited to commodities moving in 10,000 tons or more; yet he is giving these figures in 60-odd tons, 70-odd tons. I am wondering if possibly he is not misreading his exhibit, or the tabulation?

[fol. 117] Exam. Boatt: Can you clarify that?

By Mr. Colgren:

Q. What is the total quantity moving, the total over on the right?

A. Well, the 10,000 tons that I am referring to here is of the total traffic that moves through North Atlantic ports. As an example, using—I gave you on oranges and grapefruit, the Port of New York, from affected territory, exported 41 tons, but of the total tonnage exported, that was 30,552 tons. The balance of that tonnage was exported from unaffected territory. In other words, if this traffic was oranges and grapefruit from California, which is unaffected territory, transcontinental territory, where the differentials do not apply from, but from the affected territory, which I was only reading, where we do have differential rates, then those were the 100 per cent figures that I gave.

Q. Mr. Crookshank, did you complete the list for export freight?

A. No, sir. Scrap iron and steel.

Q. The tonnage?

A. It wasn't 100 per cent, because there were 4,945 tons, but only 20 tons from the Southern ports.

Mr. Langdon: Now, just on that alone, does that mean, on that scrap iron and steel, New York exported 99.6 per cent of the total exported through the four North Atlantic

ports of New York, Philadelphia, Baltimore and Hampton Roads; that was the fact, wasn't it?

The Witness: That is the way my figures read, but that [fol. 118] can't be right, because of the total tonnage that moved there was 494,466 tons, but from affected territory, Mr. Langdon—from the territory where the differentials are involved—there was 34,945 tons that moved through the Port of New York.

Now, you throw the affected and the non-affected together, then you get quite a different picture.

Mr. Langdon: That isn't what I am interested in, you know that, Mr. Crookshank.

The Witness: I don't know it.

Mr. Langdon: This goes back to my original line of questioning, if I may clarify this point. What is New York's proportion, commodity by commodity, of the traffic moving from and to affected territory through the North Atlantic ports?

The Witness: Yes, sir.

Mr. Langdon: Now, on that particular commodity to which you refer, namely, scrap iron and steel, according to our computation, New York got 99.8 per cent of all of the export scrap iron and steel that moved through the North Atlantic ports.

The Witness: I said that we were pretty close. I got 4948 tons versus 20. So that might be 99.8. I will take your figure. Maybe it is 99.99 per cent, maybe that would be closer.

Mr. Langdon: I might inform counsel we have this in exhibit form, and when our witness is reached we will introduce it. We have taken each commodity shown in a [fol. 119] consolidation of the traffic studies on both sides, and indicate the participation by ports, commodity by commodity.

Mr. Colgren: May I ask if that includes the tonnages involved?

Mr. Langdon: Yes.

Mr. Colgren: We certainly will have no objection to the introduction of that exhibit.

Mr. Langdon: It would be offered now, except our witness is in a snow bank, and we hope to have him tomorrow.

Mr. Colgren: Excuse me, just a moment, Mr. Examiner.
Exam. Boat: Certainly. Would you like to take a recess?
Mr. Colgren: I would like to, very much.
Exam. Boat: We will take a 10-minute recess. Come back promptly.

(Recess taken.)

Exam. Boat: Come to order, please, gentlemen.
Mr. Macleay: Mr. Examiner.
Exam. Boat: Mr. Macleay. Mr. Macleay.
Mr. Macleay: May we be off the record?
Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.
Mr. Colgren: Mr. Examiner, I have no further questions on redirect. In the absence of any further questions by the parties I would like to offer in evidence the verified state-[fol. 120] ment of Witness Crookshank and the exhibits AJC-C-1 through 15, attached thereto. May I remind the Examiner that we circulated certain corrected figures to Exhibits AJC-6 and AJC-10?
Exam. Boat: Is that true of the reporter's copy?
Mr. Colgren: I am sure they were made on the copy.
Exam. Boat: If they were made on the copy, it will be all right.
Mr. Colgren: Yes, the reporter's copy has been corrected.
Exam. Boat: Mr. Crookshank, you referred in your statement on Sheet 3 to other carriers, other than the port lines, other than the principal trunk line carriers, which are either proponents or opponents of the equalization.

Can you indicate their position generally in this case? They are not actively the respondent carriers here, but in numerous instances they are shown as concurring in the equalization and in the maintenance of differentials. Can you say anything more about their situation as to their interest in the ports that you represent?

The Witness: I think generally our connecting lines, who we refer to as the railroads operating in the so-called 60 per cent territory and west, those are the carriers that some of them have joined us in the equalization of rates.

On the other hand, to be competitive, they have joined the railroads serving the ports of Baltimore, Philadelphia, Newport News, and the Hampton Roads ports. In other [fol. 121] words, they are walking on both sides of the street at the same time.

Exam. Boat: You mentioned several out-ports. You show a list of out-ports here. There is no intention to change the relationship of the ports as to those?

The Witness: No, sir.

Exam. Boat: They would follow merely—

The Witness: Yes, sir.

Exam. Boat: Now, you referred—you used the term coastal ports in here. Do you include in that the Gulf ports, or are you referring only to North Atlantic ports?

The Witness: North Atlantic ports.

Exam. Boat: Is any Canadian port tonnage included in your exhibits?

The Witness: No, sir.

Exam. Boat: No Canadian port tonnage?

The Witness: No, sir.

Exam. Boat: On your AJC-4, on page 3, you show a decline in imports through Portland and Boston, I believe, on page 3 of that exhibit.

The Witness: Yes, sir.

Exam. Boat: Did you make any study to determine whether the removal of industry from New England, of which there has been some, I understand, affected that volume of import tonnage?

The Witness: I would think it would, yes, sir.

Exam. Boat: I believe Albany shows an increase in [fol. 122] import tonnage. I believe you show that there, is that correct?

The Witness: Yes, sir.

Exam. Boat: And on the next sheet, that graph, that excludes Canadian port tonnages, as I understand, also—the figures on which it was based?

The Witness: Yes, sir. In other words, the graph—it takes the figures in the exhibit and puts them in graph form.

Exam. Boat: On AJC-15, does the grain tonnage figure —do those figures include ex-lake grains from Buffalo? You mentioned other ex-lakes grain, I believe, in your testimony here.

The Witness: Yes, they do.

Exam. Boat: It includes it?

The Witness: Yes, sir.

Exam. Boat: The grain from Buffalo?

The Witness: Yes, sir. I think the A.A.R. statistics include that, and these are those statistics.

Exam. Boat: Is that tonnage involved here also?

The Witness: The ex-lake grain?

Exam. Boat: From Buffalo?

The Witness: No, sir.

OFFER IN EVIDENCE

Exam. Boat: I didn't think it was. That is all I have.

Do you tender Mr. Crookshank's Exhibit?

Mr. Colgren: Yes, sir, it has not been numbered as yet.

Exam. Boat: No, it should have been identified, probably.

Mr. Langdon: I want to renew my objection, sir, to the [fol. 123] portion of the testimony on page 30, reaching the conclusion that all the rates under our proposal are compensatory. That was argued before, if you recall.

Exam. Boat: Thank you, sir. All right, then, Exhibit No. 2, Witness Crookshank, is received in evidence.

(Respondent's Exhibit No. 2, Witness Crookshank, was identified and received in evidence.)

Exam. Boat: I think we are ready for another witness.

The Witness: Am I excused?

Exam. Boat: You are excused.

(Witness excused.)

Mr. Clark: I present Mr. Hallberg.

E. C. HALLBERG was sworn and testified as follows:

Mr. Clark: May I have Mr. Hallberg's statement numbered, Mr. Examiner, or identified?

Exam. Boat: Yes. We will identify that as Hallberg's verified statement, Exhibit No. 3.

(Respondent's Exhibit No. 3, Witness Hallberg, was marked for identification.)

Mr. Clark: There is an exhibit attached which has no identifying symbol.

Exam. Boat: It being only one, I think we might designate that H-1. I think that will be a proper identification. The letter H—Hallberg-1.

Mr. Clark: On page 2 of the Exhibit No. 3, the blank [fol. 124] space should be filled in H-1.

Exam. Boat: Proceed.

Cross examination.

By Mr. Bongartz:

Q. Mr. Hallberg, you state you have been with the Erie in its Traffic Department for 47 years?

A. 47 when that was written. It has been 48, now.

Q. Has this service been largely in New York?

A. No, sir. For 44 years it was in Chicago, and a little more than four in New York.

Q. The last four years?

A. Right.

Q. And during that time you have been in New York you have familiarized yourself with the Erie's operations in that area?

A. To the extent that I have been able to. My jurisdiction, of course, is entirely in rates and legislation.

Q. I appreciate that.

A. The way things have been for the last four years, I haven't had much opportunity to get out into the field to see the actual operations.

Q. But you were generally familiar?

A. In a very general way.

Q. General way?

A. Very general.

Q. In this traffic study that you appended to your statement, why did you pick the years '46 and '51?

[fol. 125] A. Well, the committee selected a 10-year period from the time that we started to work on this, or prior to the time we started to work on this, so 1946 would be the earliest year of that 10-year period. 1951 happened to be the middle year. And '55-'56 was a current matter at the time we started to work on it; that is, from August 1, 1955 to July 31, 1956, inclusive.

Q. '51 is the Korean War year?

A. Yes, I believe that is right.

Q. At page 3 of your statement you make the comparison of your traffic with the total import-export tonnage through all North Atlantic ports. You describe your increase in your traffic as microscopic, compared with the total?

A. Yes.

Q. It is your understanding, is it not, that this total through all the ports with which you make comparisons includes all traffic, ore, coal, traffic that was not involved in this case?

A. Yes, that is right. All of the traffic. Taken from the U. S. Engineers.

Q. And you also understand that that United States Army Engineers report or study is not limited in any way with respect to inland origins and destinations?

A. Yes, that is right, I understand.

Q. Mr. Hallberg, I will ask you to refer to this map exhibit of Witness Gilman, which bears the legend "Exhibit [fol. 126] No. D", which is a map of the New York Port Authority, showing facilities, the one I referred to this morning, "Save time—Save Money—Use New York", it shows the rail facilities of New York Harbor?

A. Yes.

Q. Would you tell us where on this map the Erie is located with respect to its facility used for export-import traffic?

A. Do you see Holland Tunnel on there in black letters in the middle of the river?

Q. Yes.

A. It says Erie right to the left—Erie Lighterage Long Dock.

Q. I see. Is that the only facility?

A. No, we have some facilities in Weehawken.

Q. Do those show up here? I see, yes. It is just south of the Lincoln Tunnel; is that right?

A. That is right, south of the Lincoln Tunnel.

Q. Now this first one you mentioned, Erie Lighterage Long Dock—

A. Yes.

Q. Is that the point from and to which you lighter traffic, this export-import traffic?

A. Lighter for export to ship-side you mean?

Q. Yes.

A. Yes. We would lighter it from there, and we also lighter domestic traffic from there.

Q. Yes. A reverse movement would also be true on [fol. 127] import? In other words, you would lighter it to that pier?

A. Yes.

Q. These other piers that you refer to up at Weehawken, what do you do there?

A. Well, the boats—some ships come up to Weehawken, discharge or take on cargo at Weehawken.

Q. How would you say that the preponderance of the Erie's export-import traffic is handled at New York?

Mr. Clark: If you know.

The Witness: Frankly, I really don't know whether it is lighterage or the ships dock at the piers.

By Mr. Bongartz:

Q. Well, in your capacity, Mr. Haliberg, as Assistant Vice President of the traffic of the Erie, you have occasion to talk to your foreign freight traffic people?

A. I do.

Q. And in the course of those conversations haven't you developed in your own mind generally how this traffic was handled, where the ships are that handled this foreign freight that comes in to New York?

A. Well, as I said, it is handled both ways. You asked me what percentage is handled by lighterage to shipside where the ships are docked down at Brooklyn or on the Manhattan side, as against the amount that is loaded direct to the ships from Weehawken or Jersey City, I am not in position to say, I have not gone into that detail.

[fol. 128] Q. You don't know enough about it to say the preponderance is handled by lighterage?

A. I would say the preponderance is handled by lighterage—a greater part of it.

Q. Some of it is handled by car-float?

A. Some, yes.

Q. You have float bridges in your territory? Will you point out where they are?

A. There are float bridges right down there—it is right there at the same place where Erie lighterage is.

Q. Right to the left of the word "Tunnel" appears the letter "FB"; is that right?

A. Yes.

Q. That is where your float bridges are?

A. Yes.

Q. The Association of American Railroads, Report PT-5, of December 1, 1957, lists the Erie as owning at New York 11 tugs, 26 car-floats, 13 steam diesel gas hoist lighters, 97 covered barges, and 51 scows, making a total of 198 pieces of marine equipment. Do you accept that statement?

A. I assume our lighterage department has reported to the A.A.R., and I will accept those figures.

Q. Do you accord split deliveries of lighterage freight at New York, Mr. Hallberg?

A. Yes, sir.

[fol. 129] Q. Without extra charge?

A. Well, the number of split deliveries allowed are limited.

Q. Two, isn't it?

A. Yes. Beyond there is a charge.

Q. There is a charge for the next three?

A. Yes.

Q. You won't make any more than that?

A. I think that is right.

Q. Is that right?

A. Yes.

Q. In connection with the two free split deliveries, that involves the unloading of the railroad cars at these lighterage points that you have referred to on the map, and then the subsequent loading of part of that freight on to the lighter for movement beyond so as to perfect the split delivery of the car itself?

A. The two portions may be loaded on one lighter, however. In other words, the lighter makes Stop 1 and then Stop 2

Q. Yes, on the other hand it also may involve, because of the destination in the harbor, unloading on to the pier and loading of one portion on one lighter and one portion on another going to different parts of the harbor?

A. That could happen.

Q. Did you hear Mr. Baylis' description of the lighterage limits in New York Harbor, with reference to this map?

[fol. 130] A. Yes, sir.

Q. That is likewise true of your operations in New York?

A. Yes, sir.

Q. That you perform service, marine service, within those lighterage limits on export-import traffic without charge over the line-haul rate?

A. Inside of those lighterage limits.

Q. Inside of those lighterage limits?

A. Yes.

Q. That involves, for example, if you please, moving something from these Erie piers that you describe over to Brooklyn down to Staten Island up to Newark Bay, et cetera?

A. That is right.

Q. To the extent that a vessel would dock at one of your piers, such as you described at Weehawken, does that involve less service in delivery to the vessel than where you have to lighter freight, say over to Brooklyn?

A. It could very well, depending upon circumstances.

Q. Do you know where the hold yards are for the Erie? Take, for example, these first piers that you mentioned there, Long Dock. Isn't there a yard west of that point

called Croxton Yard? There is no yard up at Secaucus, I guess. Would that be hold yards?

A. Croxton is the backup yard.

Q. The back-up yard for the waterfront?

[fol. 131] A. Right.

Q. So that the trains would come into Croxton Yard and break up there, and then there would be some classification there for further movement to the waterfront?

A. Yes, sir.

Q. And on out-bound traffic, the cars would be moved to Croxton, and then classified for outbound movement?

A. That is right, and that is true also with the domestic freight, as well as the import-export freight.

Q. Yes. Do you have any knowledge about the Erie's costs for loading and unloading lighters?

A. No, sir.

Q. You haven't? For unloading or loading railroad cars at the waterfront?

A. No, sir.

Mr. Bongartz: I think that is all, thank you, Mr. Hallberg.

Cross examination.

By Mr. Macleay:

Q. Mr. Hallberg, on page 3 of your statement you comment upon what you term microscopic increase in the Erie export-import cars for 1955-'56 period, counted over 1946, and compare it to the increase which you cite for all of the North Atlantic ports lumped together.

Did you make any similar computation of the increase during that period at the Port of New York?

A. For all lines?

[fol. 132] Q. For the Port Traffic. You have lumped all the Port Traffic?

A. No, I did not, sir.

Q. Do you know that that increase amounted to about a 70 per cent increase for the Port of New York during that period?

A. No, I don't know that. I will accept your figure.

Q. Well, in accepting that figure, can you explain why

the Erie did not keep pace with that increase at the Port of New York?

A. Of course, there are many reasons why a shipper might use one port as against the another. I can't account for it. Maybe our sales people weren't doing a very good job.

Q. I am not talking about one port as against another. I am talking about through the Port of New York, which you serve.

A. I understand. I can't account for why the Erie didn't participate to a greater extent than they did in the 70 per cent increase, as you say, which occurred at New York.

Q. What it amounts to, isn't it, Mr. Hallberg, there are many factors that enter into a proper understanding of these gross tonnage figures?

A. Yes, sir, that is right.

Q. Have you had an opportunity to examine Witness Crookshank's Exhibit AJC-15?

A. No, sir, I have not. My working papers didn't come.

Q. You state also on page 3 of your statement that the Erie had an increase in the number of export cars in the [fol. 133] period 1946 to the 1955-'56 period studied, an increase of five per cent?

A. Yes.

Q. Do you know what happened to the export traffic of the Port of New York as a whole during that period?

A. No, sir.

Q. What?

A. No, sir.

Q. Do you know whether for all of the North Atlantic ports during that period, if you exclude coal and grain, there was a decrease in traffic?

A. I didn't know that.

Q. You made no attempt, then, to relate your own figures to the competitive movements through the other ports?

A. Those figures weren't available to me.

Q. You didn't have Mr. Crookshank's figures available to you?

A. I did not, no, sir. When I wrote this statement I did not.

Mr. Macleay: Thank you.

Mr. Bongartz: I have just one more question, Mr. Hallberg.

By Mr. Bongartz:

Q. Do you know who Mr. Oscar A. Frost is?

A. Yes. He is our Superintendent of Lighterage.

Q. Do you know that he is a witness in a case known as the Transcontinental Divisions Case, before this Commission, ICC Docket 31503?

A. Yes, I know he was a witness there.

Q. He has recently distributed testimony for introduc-
[fol. 134] tion in that case?

A. Well, I don't know whether—I knew he was going to prepare some testimony. I didn't know whether it had been distributed or not.

Q. That testimony would be a comparison of railroad operation at New York, as compared with railroad operations in San Francisco?

Mr. Clark: Do you know?

The Witness: I really don't know what he is going to put in that statement, to be honest about it.

Mr. Bongartz: Mr. Clark, this is the only Erie witness that you propose to use in this proceeding?

Mr. Clark: Yes.

Mr. Bongartz: In that circumstance, Mr. Examiner, I would like to offer in evidence, and I will supply copies—sufficient copies of this testimony—the testimony of Oscar A. Frausen, witness for Eastern Railroads in this Transcontinental Divisions Case. Mr. Frausen is employed by the Erie as its Superintendent of Lighterage and Superintendent of Lighterage and Lighterage Stations, New York Harbor, for the Erie, and in this testimony he goes in some detail as to the marine operations of the Erie Railroad, and other railroads in New York Harbor, the distances traveled, the amount of tug movements that are performed in handling this traffic, the navigational hazards and the type of equipment used.

[fol. 135] Mr. Clark: Mr. Examiner, I object. I move that all that be stricken. This witness has not testified as

to any of these facilities, any of these operating facts. Mr. Frausen is an operating man. All of that testimony deals with operations. This witness is a traffic man, he has not testified to anything like that.

Mr. Bongartz: I am not offering this through this witness. I am offering this as a statement against interest in this proceeding against the Erie Railroad.

Mr. Foley: May I say, Mr. Examiner, this is not the time for Mr. Bongartz to be offering anything in evidence.

Mr. Bongartz: I beg your pardon—why not?

Mr. Foley: It is not the proper time, you well know. This is the time for your opponents to bring in their evidence.

Mr. Bongartz: This is the opportune time, Mr. Examiner. We are examining the witnesses for the New York railroads. Unfortunately, they have tried to present a case which they would confine to certain traffic testimony, as we pointed out this morning, with no cost testimony offered by them.

The only operations or service matters that we could get into the record was through what these men knew about it, and unfortunately Mr. Hallberg hasn't got quite the specific information that Mr. Frausen has, and I can't see how these gentlemen can object to having a true statement of their operations put into the record.

[fol. 136] Exam. Boat: How would you suggest it be put in evidence?

Mr. Bongartz: I would like to offer it as a statement of counsel and placed in the record as a statement of interest in this proceeding.

Mr. Clark: It has nothing to do with differential traffic, as such, as it has no materiality in this case, and I object to it.

Mr. Bongartz: This is testimony, Mr. Clark, I am sure you are familiar with it, it goes into lighterage limits, the character and extent of the marine service. He talks about how it takes 2½ hours to move some traffic by water. It is full of pertinent information about how you operate within the lighterage limits.

Mr. Clark: I move that all this be stricken.

Mr. Foley: Mr. Examiner, this is not appropriate for him to be offering evidence at this stage of the hearing.

Mr. Bongartz: I will defer it until sometime later. I would like these gentlemen to know about it so they will be prepared.

Mr. Welsh: In addition to that, Mr. Examiner, this is a general statement and embraces in it a great deal of tonnage that is of no pertinency in this investigation.

Mr. Bongartz: Let me read some of it.

Mr. Clark: Mr. Examiner, I move all the comment he made on that exhibit be stricken from this record.

[fol. 137] Exam. Boat: It is not evidence.

Mr. Welsh: I join in that.

Mr. Bongartz: It isn't evidence, Mr. Examiner.

Exam. Boat: No, it is not evidence. Are there any further questions of Mr. Hallberg?

Mr. Clark: I have a question.

Redirect examination.

By Mr. Clark:

Q. Mr. Hallberg, where is the great bulk of lighterage performance, in what limits in New York Harbor?

Mr. Macleay: I am sorry, we can't hear you down here.

Mr. Clark: I asked Mr. Hallberg: Within what limits is the great bulk of the lighterage performed in New York Harbor.

Exam. Boat: Speaking of the Erie, now?

Mr. Clark: Yes.

The Witness: Do you mean distancewise?

By Mr. Clark:

Q. Yes.

A. Frankly, I don't know what the distance is, but I would say from my very general knowledge it is from the Long Dock Pier there at Jersey City, as I indicated on the map, to the Manhattan side, and over to Brooklyn.

Q. Relatively a short distance, as compared to the lighterage limits?

A. Yes, that is right.

Mr. Clark: That is all.

By Mr. Moerman:

Q. I want to clear something up, if you will, Mr. Hall-
[fol. 138] berg. About these split deliveries about which you were asked, is there any difference in the number of split deliveries afforded shippers on export and import traffic at New York, versus Philadelphia and Baltimore, if you know?

A. I do not know.

Mr. Moerman: That is all.

Recross examination.

By Mr. Bongartz:

Q. In answer to Mr. Clark, you spoke of this traffic going over to Brooklyn. Where is that, Mr. Hallberg, on this map, at what places did you have reference to? Is it the waterfront over here in Brooklyn?

A. Yes, it is the waterfront on this side, whereas the lighterage limits go up here, as explained by Mr. Baylis this morning, up around George Washington Bridge.

Q. When the witness speaks of "this side", he is pointing to a territory east of the Governors Island, and I suppose it goes down in here into Gowanus Bay, and that section, too, doesn't it?

A. Yes.

Q. I suppose some of this traffic finds its way down to Staten Island, too, doesn't it?

A. Yes, and some down as far as Port Newark.

Mr. Bongartz: Yes. Thank you.

Exam. Boat: Are there any further questions?

(No response.)

[fol. 139] Exam. Boat: You are excused.

(Witness excused.)

Mr. Clark: I offer Exhibit 3 and Exhibit H-1 in evidence.

Exam. Boat: That statement and the exhibit referred to will be received as Exhibit No. 3.

(Respondent's Exhibit No. 3, Witness Hallberg, was received in evidence.)

Mr. Costello: Have we got time for one more witness?

Exam. Boat: Yes.

Mr. Costello: My name is Richard Costello, of the Lackawanna Railroad, and at this time I would like to call Mr. Ennis.

E. C. ENNIS was sworn and testified as follows:

Mr. Langdon: May I interrupt? Wouldn't it be appropriate at this time, since Mr. Ennis is not the next witness on your list, to take and receive in evidence and give an exhibit number to Mr. Heard's exhibit, Mr. Harris' exhibit, Mr. Lane's, and so forth? They are New England lines, and they are not going to be called for questioning.

Exam. Boat: I think that would be proper.

Mr. Holland: My name is Holland, and I represent the Boston and Maine Railroad. I would like to offer Mr. Heard's statement and the exhibits attached thereto, numbered BM-1 through 10.

Exam. Boat: They are identified as such in the statement.

[fol. 140] Mr. Holland: Also Mr. Lane's statement and Mr. Harris's.

Exam. Boat: Mr. Lane's and Mr. Harris'—Mr. Harris and Mr. Lane, in that order, I think?

Mr. Holland: That is right.

Exam. Boat: Now let's identify those. Mr. Heard's statement is identified as Exhibit No. 4.

(Respondent's Exhibit No. 4, Witness Heard, was marked for identification.)

Exam. Boat: Mr. Harris' is No. 5.

(Respondent's Exhibit No. 5, Witness Harris, was marked for identification.)

Exam. Boat: Mr. Lane's as Exhibit No. 6.

(Respondent's Exhibit No. 6, Witness Lane, was marked for identification.)

Exam. Boat: Has the reporter a copy of the original?

Mr. Holland: Just being passed to him.

Exam. Boat: Those may be received in evidence as Exhibits 4, 5 and 6.

(Respondent's Exhibits 4, 5 and 6, Witnesses Heard, Harris and Lane, respectively, were received in evidence.)

Mr. Holland: Thank you.

Mr. Bongartz: Has Mr. Ennis' statement been marked?

Mr. Costello: No, it hasn't. I have a few preliminary questions.

Direct examination.

[fol. 141] By Mr. Costello:

Q. Will you state for the record your name and address?

A. E. C. Ennis, New York City, Foreign Freight Traffic Manager, Lackawanna Railroad.

Q. Mr. Ennis, have you prepared a verified statement in this proceeding?

A. Yes, I have.

Mr. Costello: I would like at this time to have it marked.

Exam. Boat: That will be identified as Exhibit No. 7.

(Respondent's Exhibit No. 7, Witness Ennis, was marked for identification.)

Exam. Boat: We can identify the witness' exhibit attached to that, which is referred to on page three of his statement, and I think we should identify it as ECE-1.

Mr. Costello: Yes, sir. And also on page—

Mr. Foley: That is the only one.

Exam. Boat: That is the only place, I believe, that is referred to.

Mr. Costello: Yes.

Mr. Examiner: I wonder if I might see your copy there? I just want to make sure. There was a slight change made. I want to make sure you have the right one there.

Exam. Boat: It is probably more necessary to make the changes on the original.

Mr. Costello: I am sorry to say, but the copy you have is [fol. 142] not the proper one.

Exam. Boat: Is the copy the reporter has the right one?

Mr. Costello: Yes.

Exam. Boat: I see. You can furnish me a copy later on, if you will.

Mr. Costello: All right.

Mr. Langdon: What is this change you suggest?

Mr. Costello: I will see if you have it, Mr. Langdon.

Mr. Langdon: Could you do it for the record, and then everybody would know whether they had the right one or not?

Mr. Costello: I am sorry, it is a mistake on my part, Mr. Examiner. But on page 3 of the copy which I am handing to the reporter, there appears this paragraph, which is not in the copies which Mr. Jervis Langdon has, and the Examiner has, it reads as follows: "The lighterage operation, which is characteristic of the Port of New York, enables the harbor carriers to move freight to any vessel in the harbor regardless of its location. This contrasts with the operations at the Ports of Philadelphia and Baltimore, where freight is handled directly from car to shipside."

Mr. Langdon: Do you want that in or out?

Mr. Bongartz: It is on the original that has been submitted, I assume.

Mr. Costello: Mr. Examiner, I wonder if I could have the opportunity to check this carefully? Apparently, as I said, [fol. 143] we did make a statement—Mr. Ennis made a statement, and then there were some changes in it. Apparently in serving copies on counsel there has been some discrepancies, and I am afraid at this moment I couldn't tell exactly what they are.

Exam. Boat: All right, I think it is a good time, perhaps we better adjourn and we will take it up in the morning.

Mr. Costello: Thank you.

Exam. Boat: We will adjourn until 9:30, tomorrow morning.

(Whereupon, at 4:27 p.m., the hearing adjourned to reconvene at 9:30 a.m., Tuesday, February 18, 1958.)

[fol. 144]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I & S Docket No. 6615

FSA Docket No. 32204

[Title omitted]

Tuesday, February 18, 1958

Met, pursuant to adjournment, at 9:30 o'clock a. m.

Before: Marion L. Boat, Examiner.

APPEARANCES:

As heretofore indicated.

ADDITIONAL APPEARANCES:

Weston B. Grimes, Esq., 1001 Bowen Building, Washington, D.C., appearing for Cargill, Incorporated, Cargo Carriers, Inc.

George E. Pratt, Esq., 121 So. Broad St., Philadelphia, Pennsylvania, appearing for Chamber of Commerce of Greater Philadelphia, Protestant.

[fol. 144a] Warner H. Wagner, 1031 Investment Building, Washington, D.C., appearing for Oscar Mayer & Company.

[fol. 146]

PROCEEDINGS

Exam. Boat: Come to order, please, gentlemen.

E. C. ENNIS having been previously sworn, resumed his testimony as follows:

Mr. Costello: Mr. Examiner, upon further checking the statement of Mr. Ennis, I find that the statements which

were distributed to counsel is the correct statement of Mr. Ennis. I therefore will proceed with one other question on direct examination.

Direct examination (continued).

By Mr. Costello:

Q. Are the contents of the statement which you have submitted in this proceeding true and correct to the best of your knowledge?

A. They are.

Mr. Costello: I tender this witness for cross-examination.

Cross examination.

By Mr. Bongartz:

Q. Mr. Ennis, as I understand your statement, with respect to your experience, you had considerable operating experience with the Lackawanna Railroad.

A. Yes.

Q. In the course of 14 years.

A. That is right. However, not in a supervisory capacity.

Q. Not in a supervisory capacity?

A. Yes.

Q. But at least in the capacity that has familiarized you [fol. 147] with the operations of the Lackawanna Railroad?

A. I am familiar with the operations of the Lackawanna lighterage.

Q. And your office is at Pier 13?

A. That is right.

Q. As I understand your testimony, as Foreign Freight Traffic Manager, you are responsible not only for the sales of foreign traffic but also the servicing of that traffic?

A. That is true, yes.

Q. Will you refer to page 2 of your statement? You refer there to total tonnage, total carload, both export and import traffic, through New York Harbor over your line, in the year 1956. Is that showing limited to so-called differential territory?

A. No, that is total, that includes affected and unaffected territory.

Q. I see.

Now, I want to get you to look at this map of New York Harbor. Do you have one there?

A. No, sir.

Q. I have an extra copy here. Mr. Frauson's testimony that I was talking about yesterday had a copy of that.

Exam. Boat: Shall we make use of the microphone? I guess we probably should. They are now supposed to be on.

By Mr. Bongartz:

Q. Mr. Ennis, these eight piers that you referred to at your New York Lighterage Station at Hoboken, would [fol. 148] you locate them on this map that you have in front of you?

A. Yes, sir. The best way to locate them is look at Holland Tunnel.

Q. Yes.

A. And there they are. It is our only lighterage operation in the Harbor. As you can see, it is favorably situated.

Exam. Boat: It is north of the Holland Tunnel?

The Witness: That is right.

By Mr. Bongartz:

Q. Just north of the Holland Tunnel?

A. Yes.

Q. In that red area which says "DL&W, LTG" underneath it?

A. Yes, and 1, 2, 3, 4, up to 10.

Q. And then there are initials "FB," indicating that you have a float bridge at that point.

A. That is correct. We have 6 track there and 5 in operation at the present time.

Q. I see.

Now, this is the terminus through which this export-import traffic moves?

A. That is correct.

Q. And it moves—

A. Let me clarify that to this extent: on import, we bring our import into Pier 9 for loading.

Q. Pier 9?

[fol. 149] A. Pier 9 for loading. But the statement is true regarding export.

Q. That is, Pier 9 that shows here in this area?

A. That is correct.

Q. And to service foreign vessels, or vessels in foreign trade, rather, in New York Harbor, you operate lighters and car floats out of this terminal?

A. That is correct.

Q. If I understand it, you have 177 pieces of marine equipment to do that work?

A. That is right. Today it is 174. We lose a few en route.

Q. And that equipment consists of tugs, car floats?

A. That is correct.

Q. Steam, diesel gas hoist lighters, covered barges and scows?

A. That is right.

Q. Now, you mentioned two New York City piers on Manhattan, Nos. 13 and 41, on the North River.

A. Yes.

Q. 13 would be down in the lower part of Manhattan; is that correct?

A. That is correct.

Q. Looking at this map, that is, and 4 is—

A. 41 is approximately Christopher Street.

Q. It is right next to St. John's Park, isn't it?

A. You can see B&O 40 and Lackawanna 41.

[fol. 150] Q. That is right. It says DL&W 41.

A. That is right, Pier 41.

Q. And you handle import-export freight out of these piers?

A. Well, I would like to clarify that. On export freight, the freight handled at Piers 13 and 41 are strictly LCL. It is done for our convenience at times, where we prefer not to use a piece of marine equipment. Then we have a trucker handle it at the piers for us to make the delivery to the steamship lines.

Q. How does this freight get to Piers 13 and 41?

A. By car float.

Q. I see. You float it across.

A. That is right.

Q. And it is unloaded on to the pier?

A. Yes.

Q. Then it is loaded on to a truck?

A. That is right.

Q. And taken down to the steamship.

A. Yes.

Q. And all of that service is performed by the Lackawanna?

A. That is correct.

Q. At no cost to the shipper?

A. That is true.

Q. Do you have supporting traffic behind these lighterage piers that you referred to on the Jersey side of the Hudson?

A. Well, I would like to explain our operation. We bring [fol. 151] our through trains right into Hoboken. We don't yard them anyplace.

Q. You don't yard them at Secaucus?

A. No, sir. I wish business were that good, that we would have to, but it isn't. We bring them directly into Hoboken and those tracks, Track 97 where we run our through train in, is adjacent to our lighterage operation.

Q. In order to get to Hoboken, those trains have to go through a tunnel, don't they?

A. That is right.

Q. And that is the same tunnel that your passenger trains use, is it?

A. That is correct.

Q. Now, on your outbound movement—that which you just mentioned is our inbound movement?

A. That is right.

Q. On your import traffic, do you hold empty cars at Hoboken?

A. Yes.

Q. Do you make up your trains there?

A. Yes, they are classified there.

Q. They are classified right at Hoboken going westbound?

A. That is right. For example, in import freight that

would come in by boat or truck in lieu of lighterage to be loaded into cars at Pier 9 and moved to Pier 10, where they will be incorporated in our through trains.

[fol. 152] Q. You were here yesterday, Mr. Ennis?

A. Yes, sir.

Q. And you heard testimony regarding the lighterage limits of New York Harbor as indicated on this map that you have in front of you?

A. Yes.

Q. And your railroad, like the other railroads in New York, holds itself out to perform lighterage service without extra charge to the shipper within those lighterage limits; is that correct?

A. That is true.

Q. I believe you mentioned in your testimony something about split deliveries?

A. Yes, I did.

Q. Your railroad accords two free split deliveries without, of course, any charge; is that right?

A. That is correct.

Q. And then it accords three additional ones at a charge?

A. At a charge of $20.67 minimum.

Q. Yes.

Now, in the handling of this lighterage traffic, take export traffic, your trains come into Hoboken, those cars are how handled? They are unloaded to the piers?

A. Well, we have this operation: the covered freight is put into 3 and 4 piers. That is the covered freight. The [fol. 153] open top freight is put on what we call Long Street, adjacent to the gantry crane, so that the open freight can be moved directly from car to lighter. The covered freight in Piers 3 and 4 is unloaded directly from the car, it is all palletized in the car, unloaded directly from the car to the boat.

Where we don't have lighterage orders on certain portions of that freight, that freight is floored, but it is palletized and it is an economical operation; when the lighter order does come through, we pick it up on a fork truck and put it on the lighter.

Q. You have occasion, don't you, to unload that freight on to the pier before unloading it into the lighter?

A. No, I say normally the situation is this: when you get your order, the lighterage agent lines up his cars versus his boats, the cars on one side and the boats on the other side of the pier, and the normal operation is direct from car to boat.

Where we unload cars without lighterage order, it is floored. There is a percentage of that, that is true.

Q. There is a percentage too, is there not, of freight that is put on the pier?

A. Floored on the pier, that is right.

Q. Does your export-import traffic,—is it what could be called a balanced movement?

A. No, I would say it is 3 export to approximately 2 import.

Q. So that you do not have a situation where cars [fol. 154] balance out, that all of the empties can be filled going in the other direction?

A. No, we do not have that situation.

Mr. Bongartz: Thank you, very much.

The Witness: Thank you.

Exam. Boat: No further cross?

Mr. Macleay: I have a question.

Exam. Boat: Very well.

By Mr. Macleay:

Q. Mr. Ennis, in the traffic figures which you have submitted in your statement, you show that during the period 1947-1951 your imports increased considerably, import traffic.

A. Yes, that is true.

Q. During the same period, your export traffic fell off.

A. That is right.

Q. To what do you attribute that?

A. I will explain that. You are referring to the 6,382 import cars?

Q. I was looking at your tonnage figures rather than that.

A. Yes. Actually that involved two things. There was

a heavy movement of bananas in that period, over which we don't have control. The Fruit Dispatch and the Standard Banana used the Port of New York to a larger extent that year.

Additionally, there was an import movement of steel due to the domestic scarcity during that period.

[fol. 155] Q. And then during the period '51-55, or '55-56 period that was studied, you show a decline in imports, but a rather substantial increase in your export tonnage.

A. I can explain that in this way: that is due to a heavy movement of soy bean oil, Government controlled, to Greece, Turkey and Spain.

Q. And you got that traffic despite the differential?

A. Well, we had to get it, it originated on our own railroad.

Q. Beg your pardon?

A. We had to get that traffic, it was drummed on our own railroad, at Boonton, New Jersey.

Mr. Moerman: What was the point you named, origin point?

The Witness: Boonton, New Jersey, B-o-o-n-t-o-n.

By Mr. Macleay:

Q. Do you consider Boonton, New Jersey to be in differential territory?

Mr. Costello: Transit.

The Witness: It is a transit proposition, you see. I said it was drummed at Boonton. It didn't originate there, it was drummed there.

By Mr. Macleay:

Q. You say it did come from differential territory?

A. Yes, it was transit.

Q. And moved against the differential?

A. That is right.

Mr. Bongartz: I have just one question I overlooked, Mr. [fol. 156] Examiner, if I could ask the witness.

Exam. Boat: Very well.

By Mr. Bongartz:

Q. Mr. Ennis, you have a marine yard for the maintenance and repair of this equipment?

A. That is right.

Q. Am I correct in stating that that is known as the Brighton Marine Repair Yard at Staten Island?

A. That is true.

Q. And does that show up on this map you have in front of you?

A. Look at West Brighton down there, located around Kill Van Kull, I presume it is in that area. I am not too sure. Let's see now. I think it would be New Brighton, rather than West Brighton. But I am not too sure.

It is jointly operated by us and the Lehigh Valley.

Q. I think it is jointly owned by you and the Lehigh Valley but operated by you, is that it?

A. That is right. That is the situation.

Mr. Bongartz: That is all.

Mr. Costello: I have a few questions on redirect, Mr. Ennis.

Redirect examination.

By Mr. Costello:

Q. Mr. Ennis, would you please tell us where most of the lighterage deliveries in connection with export and import freight handled by the Lackawanna are performed in New York Harbor?

[fol. 157] A. Yes. The majority of them are to North river piers and to the Brooklyn piers. As a matter of fact, about 60 percent of the export business go to piers located in the Brooklyn area.

In that connection, I would like to point out that our average tow is approximately 4 miles.

We have a favorable location within the port.

Q. And I would also like to clarify one point. I am not sure if the stenographer got it.

In response to a question by Mr. Bongartz about the

handling of export freight, you made some statement about the palletizing of freight.

A. That is correct.

Q. Is it a correct statement that all of the freight in the cars is palletized, where it is floored or delivered directly to the boats?

A. That is correct.

Q. Now, in connection with this lighterage service that is performed by the Lackawanna, by the Pennsylvania Railroad and the other railroads in New York Harbor, isn't that a service that is part of our line haul rate?

A. True.

Q. Just like a switching operation that is performed in some other city?

A. That is true.

Q. Such as Philadelphia and Baltimore?

[fol. 158] A. That is true.

Q. Mr. Ennis, in connection with the use of our car float equipment, would it be a fair statement to say that that is used chiefly in connection with domestic traffic in New York Harbor?

A. That is true. With but few exceptions, it is all domestic. We have calls on the export-import end of our business, for car floats. I would say they run to 1 to 2 per week. But the car floats are usually for station pier work and for auxiliary terminals, and it is strictly domestic.

By Mr. Moerman:

Q. Is this car float and lighterage operation used for a part of your traffic to and from New York?

A. Yes, I just indicated that, that we get calls on export-import freight for possibly one or two weekly.

Now, arrangements have to be made with the steamship lines and they have to agree to take a car float.

Q. What I want to know is what part of your total business to and from New York, domestic, export and import, is involved with marine movement?

Mr. Costello: If you know, Mr. Ennis.

The Witness: Give that to me again. What part of our—

By Mr. Moerman:

Q. Total business in and out of New York is involved in lighterage and car floatage? I want to know whether it is important, incidental or your regular operation.

A. It is very important to us. I don't know the per-
[fol. 159] centage, but it is very important to us.

Mr. Costello: I just have one further question.

By Mr. Costello:

Q. Mr. Ennis, just to clarify this point: our lighterage equipment, the Lackawanna's lighterage equipment at New York Harbor, is used both in connection with domestic and export-import traffic?

A. That is true.

Mr. Costello: I have no further questions.

Mr. Bongartz: I have a couple of questions in view of what has been asked.

Recross examination.

By Mr. Bongartz:

Q. You talk about your average tow, Mr. Ennis, and where you usually go, as I understand it, Brooklyn. Where else do you go?

A. We go to any point within the free lighterage limits.

Q. Right. You hold yourselves out to do that?

A. True.

Q. Any shipment that comes in where the vessel on export to receive the shipment is located anywhere within these free lighterage limits, the Lackawanna will take this freight to the vessel at no extra charge?

A. That is our obligation.

Q. That is your obligation under your tariffs. And similarly on the reverse movement, you will go anywhere within the free lighterage limits to pick up the freight that comes in?

[fol. 160] A. That is right.

Q. Now, I wasn't quite clear about a question that was

asked you about the importance of lighterage. Are you saying that on this export-import traffic, that lighterage was very important factor?

A. It represents about 12 percent of the Lackawanna's total revenues.

Q. But I mean, as I understand it, your handling of export-import freight is via marine movement?

A. Yes.

Q. That is the way you handle it?

A. Yes. Also by truck in lieu of lighterage. And also to Port Newark we have a joint rail service in connection with the CNJ. We get into Port Newark three ways: lighter, joint routes and rates with the CNJ, and by truck in lieu of lighter.

Q. Truck in lieu of lighter, that is truckage at your expense?

A. That is true.

Q. And then on the CNJ movement you have to make some allowance to the Central of New Jersey?

A. It is a part of the through rate.

Q. Yes. You have to give them a division out of it?

A. That is true.

Q. Now, you, in answer to your counsel's question, made some reference to Philadelphia and Baltimore.

As far as terminal operations are concerned, isn't the [fol. 161] big difference between New York, on the one hand, and Philadelphia and Baltimore, on the other, the fact that at New York this export-import freight has to have a water movement?

A. That is true.

Q. That is the big difference between New York, on the one hand, and Philadelphia and Baltimore, on the other; is that right?

A. Yes. I am not too familiar with the operation at Philadelphia.

Q. But that is your understanding?

A. That is my understanding, that the operation at Philadelphia is strictly a car-to-boat movement, and the car would have to be moved from one pier to the other to effect two deliveries.

Q. It would be a direct transfer from the car to the boat as distinguished from this water operation that you have

been describing?

A. That is right. But I understand you do have some lighterage movement in Philadelphia and Baltimore.

Q. But it is insignificant as compared with New York, isn't that true?

A. I am not sure about the extent of it, but I understand there is a lighterage movement in the Port of Baltimore.

Exam. Boat: Do you handle any freight to and from docks on the Jersey Shore, where you have direct docking to vessels?

The Witness: No, unfortunately our piers aren't deep [fol. 162] enough to dock vessels, with one exception, Pier 10, where at high tide we might bring in a tanker direct and transfer the oil direct to cars or to a tank facility located in that area.

By Mr. Bongartz:

Q. That is pretty much the exception?

A. Yes, it is an exception.

Q. On this trucking in lieu of lighterage that you mentioned, what are the rates that you pay for that?

A. I believe the present rates vary with the commodity, and the point trucked from and to, and would average 18 to 22 cents per hundred.

Q. Per hundred pounds?

A. Per hundred pounds.

Q. And that, of course, does not include the operation of unloading the car and into the truck?

A. No, sir, that is railroad labor. We use—

Q. In unloading the truck—

A. That is right. The Lackawanna uses railroad labor rather than ILA labor, which is cheaper for us in the Port of New York.

Q. What do you estimate the cost of loading a boxcar on the Lackawanna?

A. Our cost of lighterage on the Lackawanna is 86 cents per ton.

Q. 86 cents per ton for lighterage?

A. That is right.

[fol. 163] You asked me how much it cost to handle a car, unload. That would be a pier operation cost, and the cost per ton, covered freight is 86 cents, and the cost per ton on open freight is 36.66 cents.

Q. And that is just—

A. Per ton.

Q. (Continuing) —just to unload from car to lighter?

A. Yes, it includes that operation at the pier, unloading from car to lighter or in reverse, loading from—loading import from the lighter to the car.

Q. And do you have any figures as to what it cost you to operate these lighters around the harbor?

A. No, I am not a cost man. I can't qualify to that.

Exam. Boat: Can you give a typical example of trucking in lieu of lighterage?

The Witness: For example, trucking in lieu of lighterage is an expedited service which developed at the demands of certain shippers.

It covers principally, in our end of the business, coffee and crude rubber. Crude rubber people, for example, have reduced their inventory from approximately 30 days to 18 days because of this service.

We can pick up by truck in lieu of lighterage this morning and have it out of New York tonight. And the same is true of coffee.

[fol. 164] Exam. Boat: That would be on import business?

The Witness: It is only import business.

Exam. Boat: And you pick up the coffee on the Manhattan side?

The Witness: That is correct, take it to one of our pier facilities, load it in a car and move it out.

Exam. Boat: You take it to a pier facility on the Manhattan side?

The Witness: We take it to our New York piers or Hoboken, mostly to Hoboken. Therefore we don't have any car float operation there. Pick it up on the New York side and truck it over to Hoboken, where it is loaded at Pier 9.

By Mr. Bongartz:

Q. Where does he pick it up on the New York side?
A. Any pier, within the lighterage limits.
Q. Then he goes through the tunnel?
A. He pays the tunnel charge.
Q. That is included in the rate that he charges you?
A. That is right.

Mr. Bongartz: That is all.
Mr. Costello: I have a few more questions.

Further redirect examination.

By Mr. Costello:

Q. Mr. Ennis, whatever the type of pickup or deliveries involved, whether it is car float or lighter or trucking in lieu of lighterage, the service which the Lackawanna and [fol. 165] the other New York railroads hold themselves out to perform in connection with their line haul rates—
A. That is true.
Q. Mr. Bongartz asked you another question or two about lighterage limits. In that connection, the lighterage tariff applies not only to export-import traffic but also to domestic traffic?
A. That is right.
Q. Do you recall the last time the Lackawanna has gone down to Perth Amboy, New Jersey, to lighter any shipments down there in connection with import or export traffic?
A. No. For the Lackawanna, that is a domestic move. We handle copper, but it is strictly a domestic movement.
Q. You wouldn't handle any export or import shipments?
A. No.

Mr. Costello: Thank you.

By Mr. Moerman:

Q. How long has this pickup and delivery within the line-haul rate via marine facilities been the practice in New York Harbor, to your knowledge?

A. Speaking for the Lackawanna—you are talking about truck in lieu of lighterage now?

Q. No, I am talking about lighterage and car floatage and those services within your line-haul rate.

A. Well, I don't know when, but for many, many years. I can't give you the exact date, but it has been in effect for [fol. 166] many, many years.

Q. You don't remember when it wasn't so, is that right?

A. No, no.

Mr. Moerman: That is all.

Further recross examination.

By Mr. Bongartz:

Q. On this palletizing, Mr. Ennis, these pallets have to be in the car throughout its movement, don't they?

A. No. We furnish the pallets. In other words, we have a fork-lift truck operation.

Q. Yes.

A. We load the freight on pallets and move it to the boat.

Q. Then you take it—it has to be taken off the pallets?

A. That is right, and they come back to us.

Q. The same way on the car, it is taking it off?

A. That is right.

Q. So from the pallet point of view you have to load the freight as packaged on to the pallet?

A. That is right.

Q. Then it moves across and then you take it off the pallet?

A. It makes for more economical handling with fork-lift trucks.

Q. But you still have a certain amount of stowage involved and the unloading of the car by hand?

A. Yes.

Q. Your domestic rates at New York are generally higher [fol. 167] than your export-import rates, aren't they?

A. Yes, they are.

Mr. Bongartz: Thank you, very much.

Mr. Costello: I have no further questions.

Exam. Boat: That seems to be all.

(Witness excused.)

OFFER IN EVIDENCE

Exam. Boat: Do you tender the exhibit, Mr. Costello?

Mr. Costello: Yes. I believe it has been identified as Exhibit No. 7.

Exam. Boat: That is right.

If there is no objection—

Mr. Costello: I believe the exhibit attached has also been identified as ECE-1.

Exam. Boat: That is correct.

If there is no objection, Exhibit 7 is received.

(Respondent's Exhibit No. 7, Witness Ennis, was received in evidence.)

Exam. Boat: We have reached the point of Mr. Thomas on the list here, but we will pass over that, is that right?

Mr. Langdon: Yes, I understand he was ill and couldn't be here.

Mr. Warnock: Mr. Thomas is sick in bed. He has been in bed for almost a week. We will be glad to offer him for cross-examination as soon as he is able of coming down here.

Exam. Boat: We will have to consider that later.

[fol. 168] We have reached Mr. Flanigan, I believe, as the next witness.

G. W. FLANIGAN was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Please state your name and address.

A. My name is George W. Flanigan, Assistant Traffic Manager of the New Haven Railroad, official headquarters at 54 Meadows Street, New Haven, Connecticut.

Q. Are you the George Flanigan who submitted and distributed under this docket number, verified statement dated June 19, 1957?

A. I am.

Q. Are the statements contained therein true, to the best of your knowledge and belief?

A. They are.

Mr. Keenan: The witness is tendered for cross-examination.

Before he is examined, may I ask that his verified statement be marked as an exhibit for identification?

Exam. Boat: It may be identified as Exhibit No. 9.

(Respondent's Exhibit No. 9, Witness Flanigan, was marked for identification.)

Cross examination.

By Mr. Bongartz:

Q. Mr. Flanigan, if you will, I will get you to refer to this map of the New York Port Authority that we have been using. This is a map that has a legend on it: Exhibit No. [fol. 169] D, of Witness Gilman.

I want you, if you will, to locate the New Haven's water facilities at New York. You mentioned first, Harlem River. You say: Included in this service is the loading or unloading of the car at Harlem River from or to the lighter, and so forth.

Now, would you just identify this Harlem River facility that you refer to?

A. If you look up in the upper right-hand corner, the Bronx, at the tip, you will find designated Harlem River, New York, New Haven, Hartford lighterage.

Q. And at that point with respect to the traffic involved in this proceeding, the New Haven Railroad loads and unloads cars for movement, or that has had movement in New York Harbor by lighter?

A. That is correct.

Q. The lighterage limits which have been described by other witnesses in connection with this map apply equally to the New Haven Railroad?

A. That is correct.

Q. And within the boundaries of those limits the New Haven undertakes to lighter export-import traffic through the harbor?

A. That is correct.

Q. Without extra charge to the shipper?

A. That is included in the through rates to which we are a party.

[fol. 170] Q. Your railroad does not have any direct connection with any pier which services ocean-going vessels?

A. We have no piers other than the piers at Harlem River, which are our own, controlled piers.

Q. That is purely a lighterage operation?

A. That is correct.

Q. You mentioned Oak Point, where you have float bridges.

A. That is in the same general area, in the Harlem River. I believe it is also marked. It is over here to the right, the red indicated space, showing the float bridges projecting in the East River, just below Casanova.

Exam. Boat: The largest red area in the upper right-hand corner?

The Witness: That is right.

By Mr. Bongartz:

Q. And to the extent that car floats are moved to and from that location, they have to go through Hell Gate, is that right?

A. No, that is not correct.

Q. What movement do they take down through there?

A. Over our own tracks.

Q. Isn't this the point up here where it says "FB Oak Point"?

A. Oak Point is the red point you are looking at. Cars, to get there, come directly over our rails.

Q. But when the car float moves out, it goes out into the harbor, it has to go through Hell Gate.

[fol. 171] A. Oh, yes. I confused Hell Gate Bridge in your definition. Yes. Through Hell Gate, yes, through that part of the water known as Hell Gate.

Q. That is right.

That is quite an hazardous operation through Hell Gate, isn't it?

A. How hazardous it is, I don't know, but it is a difficult operation.

Q. Because of the current?

A. Well, I am not a marine man.

Q. Now, with respect to your lighterage traffic which moves through this Harlem River yard, cars have to be loaded or unloaded there depending on whether it is export or import and transferred to lighters, or from lighters?

A. That is correct.

Q. And these lighters go to steamship piers?

A. Piers at which steamships are located, or in the case of our local rivers to points within the free lighterage limits of New York Harbor.

Q. You mention here, you say: Included in this service is the loading or unloading of the car at Harlem River from or to the lighter, and the loading or unloading of the lighter at the pier or attaching or detaching from or to tackle at ship's side.

My question is, is all of this service performed by the [fol. 172] New Haven at no additional cost to the shipper?

A. That is correct. It is included in the through rates which are charged.

Q. It is included in the line-haul rate?

A. That is right.

Q. And likewise, what you have to say about your car float operation is included in the line-haul rate?

A. That is correct.

Q. Do you have this split delivery lighterage operation, where the shipper is given two free split deliveries?

A. We have somewhat similar provisions as the other New York Harbor lines.

Q. Yes.

Now, are you familiar with the way export-import traffic is handled at Philadelphia and at Baltimore?

A. I have no direct familiarity with it, other than that which I read about through the years.

Q. To the extent that you have familiarity, does it extend to this: that the great difference between the handling

of export-import traffic at New York, and the other two ports that I have mentioned is that at New York it is predominently a marine movement, whereas at the other ports it is predominantly a shore to ocean-vessel movement?

Mr. Keenan: Mr. Examiner, I don't think, although I am very glad to hear whatever Mr. Flanigan says on the [fol. 173] matter, that it is proper to include in the record material that the witness says he arrived at only by reading the newspapers, and that is substantially what Mr. Flanigan has told Mr. Bongartz just now, as to his knowledge of the relative port operations, in Philadelphia and New York, if I recall correctly.

Mr. Bongartz: I am willing to accept Mr. Flanigan's statement, but what does he mean then at page 3 of his testimony, where he says in general the service accorded by the New Haven at Boston and New York, in connection with both import and export traffic is similar to that accorded like traffic at other ports involved in this proceeding.

Mr. Keenan: I have no objection to Mr. Flanigan answering that question, Mr. Examiner.

Mr. Bongartz: If he has no objection to—

The Witness: I have the question.

Mr. Bongartz: Just a minute.

If Mr. Keenan has no objection to Mr. Flanigan answering that question, I submit that my question should be answered first.

The Witness: Let's answer them both, if you care to.

By Mr. Bongartz:

Q. You have to answer one at a time. Supposing we go back to my question and you answer that.

(Question read.)

The Witness: My impression is that it is somewhat along the lines you speak, although I do understand there [fol. 174] is some movement in marine service at both Philadelphia and Baltimore.

By Mr. Bongartz:

Q. But not merely to the extent as it is at New York?

A. I wouldn't hazard a guess as to its extent.

Now, the other question—

(Question read.)

By Mr. Bongartz:

Q. What did you have in mind when you made this statement at page 3?

A. What I had in mind was that our service at Boston is, generally speaking, quite comparable with that at Philadelphia, Baltimore, Chesapeake Bay, with the possible exception that we do make direct delivery without a floatage or lighterage operation.

Q. Then, it was an inadvertence that New York was put in that paragraph?

A. Oh, no, New York is similar to other carriers at New York—

Q. Wait a minute.

A. I included Boston and New York.

Q. You just in explanation of this paragraph stated that in your opinion the operation, transfer operation at Boston on this traffic is similar to that at Philadelphia and Baltimore. How do you get New York into that picture?

A. New York is similar to the extent that you do have lighterage service at Philadelphia and you do have lighterage service at Baltimore. You do have floatage service at [fol. 175] Philadelphia, and you do have floatage service at Baltimore. To that extent, it is similar.

Q. It is only similar to the extent that there may be lighterage services at the other ports?

A. If there is, I think it is correct that—

Q. But only to that extent it is similar?

A. That is right.

Q. It certainly isn't similar as far as the New Haven is concerned, is it, because all of your traffic at New York is lightered or floated?

A. Or trucked in lieu of lighterage, yes.

Q. On this trucking in lieu of lighterage, again that is a New Haven expense?

A. That is correct.

Q. Will you tell us what you pay for that service?

A. I am not familiar with that figure.

Q. Now, this Exhibit 1, which is attached to your statement, Mr. Flanigan, this purports to show import traffic through New York over your line, both to affected and unaffected territory.

You read the definition of those terms yesterday. Is that your definition of them?

A. Yes, that is right.

Q. You show to affected territory over the New Haven 16 cars. This was for a period of a year. Now, first, you [fol. 176] show rough stone. Where did those five cars of rough stone go?

A. I can't say at this time. It is not carried—the origins are not in this statement. It is included in some part of the affected territory, which is roughly west—

Q. Do you know the route that it took?

A. It is almost certain to be either the Canadian Pacific dispatch or the National dispatch.

Q. Well, now, when the New Haven receives import traffic at New York, going to affected territory, how does it go on the New Haven? What route does it take?

A. Well, various routes, but principally through the Canadian Pacific dispatch, which is via Springfield and Boston and Maine Railroad, Wells River, Vermont; Canadian Pacific Railway, Detroit, and the Canadian Pacific Railway's connections beyond there to the affected territory, or via New London and the Central Vermont Railway, East Alburg, and the Canadian National Railway, that is, in Vermont. The Canadian National Railway, possibly, to Chicago, or points in the Michigan area served by the Canadian National Railroad, or the Grand Trunk, its wholly-owned subsidiary, and through Detroit and other junctions in the Michigan area, with connections of that line into the affected area.

Q. In other words, when the New Haven receives this import traffic and it is loaded into your cars, it moves east instead of west? It starts out, goes up to New Haven, [fol. 177] then up to Springfield, around the block there, going eventually west; or it goes to New London and gets

on the Central of Vermont and goes north and then eventually west?

A. That is true.

Of course, no railroad as a general thing runs direct to the point of destination of the freight. There is a certain amount of circuity in all movements.

Q. Well, you have, do you not, railroads at New York, serving New York, which go more directly west than the New Haven does?

A. That is absolutely correct.

Q. And would you say that that constitutes a disability on the part of the New Haven as far as obtaining this import traffic that is destined to differential territory?

A. It certainly adds to our difficulties,—

Q. Yes.

A. (continuing) —which are further complicated by our difficulty on rates.

Q. And that is shown up, is it not, by your Exhibit 1 to the extent that as far as unaffected territory is concerned, you have considerably more than 16 cars, namely, something over 4,000 cars?

A. That is correct.

Q. That unaffected territory in large measure is New England?

A. I would say it is New England and Eastern Canada, perhaps, and Central Canada.

[fol. 178] Q. To the extent that you got those 4,000 cars of import traffic at New York, moving to this unaffected territory in New England, Boston, I assume was deprived of that traffic?

A. Well, we also handle a considerable amount of traffic from Boston in the same general area.

Q. Boston serves New England?

A. Boston serves New England, as well as New York serves New England, and I think Philadelphia and Baltimore also try to serve New England to some extent.

Q. Try to.

Now, on your export traffic, Mr. Flanigan, you show in the same period, export traffic through the Port of New York 26 cars, from the affected territory, and something over 2700 cars from the unaffected territory. And what you said

about your disabilities with respect to import traffic would likewise extend to this export traffic?

A. That is as to both rates and other disabilities.

Q. But the disabilities I was talking about were your disabilities in contrast to other railroads serving New York.

A. We have handicaps as compared with the other railroads serving New York, in addition to the rate handicap.

Q. Well, I won't ask you which comes first, but it is a very definite disability that you have with respect to other railroads serving New York?

A. That is correct.

[Vol. 179] Q. Fine.

Those routes that you mentioned with respect to your import traffic are generally the same with your export?

A. Correct.

Q. Page 9 of your statement, you apparently give emphasis to the New Haven's net income position in 1956, as compared with the net income of other railroads named there.

Is the New Haven's net income affected by its passenger operations?

A. Yes, of course, as is every carriers.

Q. But isn't the New Haven, in that respect, somewhat worse off than other carriers, except possibly the Long Island Railroad, in that a greater percentage of the New Haven's over-all business is passenger traffic; isn't that correct?

A. A greater percentage than what? A greater percentage—

Q. Of the total.

A. Yes, as to the total, New Haven's percentage is greater, perhaps; it is next to perhaps the Long Island Railroad and perhaps the New York Central.

Q. Can't you tell us approximately what percentage is on the New Haven, passenger out of total? Isn't it around 50 percent?

A. I don't think it approaches 50 percent, in several years. There have been times when it has approached 50 percent in the past year., particularly during the war period.

[fol. 180] Q. Now, in this year '56 that you referred to, what was the New Haven's passenger deficit in that year?

A. I wouldn't attempt to say. It was a large deficit.

Q. Isn't that a matter that is pretty important to all New Haven people?

A. It is important to all of us, the passenger deficit; New Haven, as well as other railroads.

Q. Yes, but isn't it particularly important to the New Haven Railroad?

A. It is particularly, very important to us.

Q. And your president, at the present time, is marching up and down New England preaching the gospel of passenger deficits, is he not?

A. I think he is preaching the cause of all of the railroads in that respect.

Q. I think he is, too, but he has particularly in mind the New Haven situation.

A. His primary interest is the New Haven.

Q. Can't you give for this record a figure of the New Haven's passenger deficit in 1956?

A. I don't care to put in a guess, and—I know it is a substantial deficit, but I would not care to put in a guess, because guesses have no place here.

Mr. Bongartz: Maybe counsel could clear it up for us.

Mr. Keenan: I am ashamed to say I don't know what it is. [fol. 181] I will certainly be glad to give it to you, when I look it up somewhere.

Mr. Bongartz: Would you supply that for the record, Mr. Keenan?

Mr. Keenan: Be glad to, certainly.

Mr. Examiner, may I inquire of Mr. Bongartz whether he would be content to put the Pennsylvania's in while we are at it?

Mr. Bongartz: Well, you see—I have no objection to putting the Pennsylvania's in, Mr. Keenan.

Mr. Keenan: Well, then, let's just settle it there.

Mr. Bongartz: You on the New Haven have a situation and you have brought this up here in Mr. Flanigan's testimony, showing how poor the New Haven is. It is a matter of common knowledge that the reason the New Haven is as poor as it is is because of its passenger situation—

Mr. Moerman: It is also true that you opposed the New Haven in the iron ore case and beat them in the courts, and it is also true that you are opposing them here, where they are trying to improve their freight situation.

Mr. Bongartz: Well, if they win here, they will lose their shirts, which are half off now.

Mr. Keenan: At any rate, are we agreed, Mr. Examiner, that Mr. Bongartz and I will choose up passenger deficits?

Mr. Bongartz: We will exchange passenger deficits.

[fol. 182] Exam. Boat: Any further cross?

(No response)

Exam. Boat: Any redirect?

Mr. Keenan: May I have just one minute, Mr. Examiner?

Redirect examination.

By Mr. Keenan:

Q. Just to make sure there is no confusion on the record, did you mean to testify there was any car float operation whatsoever at Boston?

A. If I did, I certainly tried to testify that there was no car float operation at Boston.

Q. Did you mean to testify that there was any lighterage operation at Boston?

A. I also meant to testify if I did not, and I think I did, there was neither lighterage or floatage, and to an extent we had a much simpler operation at Boston than at some of the other ports involved.

Q. Mr. Flanigan, is the lighterage operation which you have described at rather great length to Mr. Bongartz, is that the lighterage operation that is used by the 16 cars imported at the Port of New York by the New Haven Railroad destined for affected territory during the period of the one year study?

A. Yes, I would say that that is correct.

Q. And are those 16 cars comparable to 4100-odd cars imported during the same period by the New Haven Railroad destined for unaffected territory?

[fol. 183] A. They are comparable, yes.

Q. Are the comparable figures with regard to export traffic, derived in this study, 26 cars and 2700-odd cars as reflected by sheet 3 of your Exhibit 1 to your verified statement?

A. That is correct.

Mr. Keenan: I have no further questions, Mr. Examiner.

Mr. Bongartz: No further questions.

OFFERS IN EVIDENCE

Exam. Boat: Do you tender the exhibit?

Mr. Keenan: I tender Exhibit 9.

Exam. Boat: That exhibit is received as No. 9.

(Respondent's Exhibit No. 9, Witness Flanigan, was received in evidence.)

Exam. Boat: We seem to have reached a point, Mr. Colgren, are these next—

You are excused.

(Witness excused.)

Mr. Colgren: Yes, sir, Mr. Examiner, I have the originals for the reporter.

The verified statements of Mr. E. E. Allstatter, Traffic Manager of the Sorg Paper Company.

Exam. Boat: May be identified as Exhibit No. 10.

(Respondent's Exhibit No. 10, Witness Allstatter, was marked for identification.)

Mr. Colgren: Also, the verified statement of Witness Frederick W. Bennett, Assistant Vice President and Gen- [fol. 184] eral Traffic Manager of the Sharon Steel Corporation, Sharon, Pennsylvania.

Exam. Boat: That may be identified as Exhibit 11.

(Respondent's Exhibit No. 11, Witness Bennett, was marked for identification.)

Mr. Colgren: Also, the verified statement of Mr. William F. Conlin.

Exam. Boat: That may be identified as Exhibit 12.

(Respondent's Exhibit No. 12, Witness Conlin was marked for identification.)

Mr. Colgren: Also, the verified statement of Witness R. B. O'Donnell, Traffic Manager of the Armco International Corporation of Middletown, Ohio.

Exam. Boat: That may be identified as Exhibit 13.

(Respondent's Exhibit No. 13, Witness O'Donnell, was marked for identification.)

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Colgren: Also, the verified statement of Witness F. C. Tighe, Traffic Manager of the Union Carbide Corporation.

Exam. Boat: That will be identified as No. 14.

(Respondent's Exhibit No. 14, Witness Tighe, was marked for identification.)

Mr. Colgren: There has been no request for cross-[fol. 185] examination on the verified statements just submitted, and I ask that they be accepted in the testimony.

Exam. Boat: Any objection?

(No response)

Exam. Boat: There being no objection, the exhibits are received as Exhibits Nos. 10 to 14, inclusive.

(Respondent's Exhibits No. 10, Witness Allstatter; No. 11, Witness Bennett; No. 12, Witness Conlin; No. 13, Witness O'Donnell, and No. 14, Witness Tighe, were received in evidence.)

Exam. Boat: Shall we take a short recess? Not over ten minutes, please.

(Short recess.)

Exam. Boat: Come to order, please, gentlemen.

Mr. Moerman: Mr. Gilman, please.

ROGER H. GILMAN was sworn and testified as follows:

Mr. Moerman: Mr. Examiner, at this time I would like to offer for identification the verified statement of Mr. Roger H. Gilman, Director of Port Development, at the Port of New York Authority.

Mr. Gilman's statement consists of 16 pages, a one-page appendix and nine exhibits. I suggest that the statement and the one-page appendix be marked as an exhibit.

Exam. Boat: Off the record, please.

[fol. 186] (Discussion off the record.)

Exam. Boat: That may be identified, the statement and the exhibits in connection therewith, may be identified as Exhibit No. 15.

(Exhibit No. 15, Witness Gilman, in support of Respondent, was marked for identification.)

Mr. Moerman: Let me give the reporter the original. The witness is tendered for cross examination.

Cross examination.

By Mr. Langdon:

Q. Mr. Gilman, are you the senior officer or perhaps I should say supervisory officer who is testifying for the New York Port Authority in this proceeding?

A. Yes, sir, I am the Director of Port Development, and the two other witnesses are in my department.

Q. Mr. Laux reports to you, does he?

A. Yes, sir.

Q. And the same is true of Mr. Gilbert?

A. That is correct.

Q. Now, beyond the rather general description of your job, which is set forth on page 1 of your statement, would you mind describing a little bit in more detail exactly what your responsibilities are?

A. My responsibilities embrace two basic functions. First, I am responsible for the general advance or long-range planning of transportation and terminal facilities other [fol. 187] than aviation, within the Port Authority. And,

second, I have the responsibility for the trade agreement and promotion and port promotion activities of the Port Authority. They all come within the Department of Port Development.

Q. Do you specifically, for instance, Mr. Gilman, have responsibility for reviewing the advertisements of the New York Port Authority having to do with the use of the port and port development?

A. I have general responsibility for that. I do not review all of them before they are actually released. Of course, I am familiar with all of them.

Q. They are, I assume, checked for accuracy in the Port Authority?

A. Yes, sir.

Q. Is that done within your department?

A. That is done within my department.

Q. Now, is the same true of the promotional literature that comes out of the Port Authority from time to time having to do with New York Harbor activities and developments?

A. Anything that relates to the promotion of commerce and trade is prepared within my department.

Q. What responsibility, if any, do you have for the magazine that is issued monthly, I believe, or has been issued monthly by the New York Port Authority, called "Via Port of New York"?

A. That is also prepared within my own department.

[fol. 188] Q. The articles dealing with the port activities are, I take it, checked for accuracy in your department?

A. Yes, sir, by those responsible for it.

Q. Now, going to the activities of the Port Authority for a minute, what responsibilities, if any, do you have for pier construction or reconstruction or pier maintenance, perhaps, in the New York Harbor area?

A. Do you mean my own responsibility, or the Port Authority's responsibility?

Q. The Port Authority's responsibility.

A. The Port Authority is responsible for developing and operating those sections of the waterfront in which we arrive at agreements with the municipalities which actually

own the waterfront. That has occurred in five specific locations within the New York-New Jersey Harbor.

Where those leases have been signed with the municipality, and in one case where we actually purchased the property in the Brooklyn waterfront, we then have complete responsibility for reconstructing those facilities or constructing new facilities where that is appropriate.

That also includes the general responsibility for maintenance and rehabilitation.

Q. Would you please name those five pier developments which are the responsibility of the Port Authority in the New York Harbor area?

[fol. 189] A. Yes, sir.

They include the Brooklyn Port Authority piers, which is a 2-mile stretch of waterfront just south of the Brooklyn Bridge.

Q. If I may interrupt, sir, I wonder if you will be good enough to anticipate your map exhibit, which has heretofore been used rather extensively in this case, the save-time, save-money map, and identify these port facilities?

Mr. Welsh: Mr. Langdon, may I ask one question to clarify, if you please?

When you alluded to the New York-New Jersey Harbor, you meant that geographical area described as New York Harbor, did you not?

The Witness: What we know as the Port of New York district.

Mr. Welsh: Which is New York Harbor, geographically?

The Witness: Yes, there are various terms used.

Mr. Welsh: You have used New York Harbor on this exhibit.

The Witness: Yes. The Brooklyn Port Authority piers includes the stretch of waterfront, referring to this map, from Brooklyn Bridge to a section just south of the Brooklyn-Battery Tunnel. It is about a 2-mile stretch of waterfront, marked in light purple.

By Mr. Langdon:

Q. That is designated "Port Authority piers"?

A. It is designated "Brooklyn-Port Authority Piers." I

think you will see that in the stretch of water between Governors Island and Brooklyn itself.

[fol. 190] Q. How much of an investment have you got in that property there?

A. We will have, when the work is completed, an investment of about $85 million. I can't say what it is just at the moment, because some of that work is going on at the present time. But the total investment will be about $85 million.

Exam. Boat: Does that include the Gowanus Bay elevator property?

The Witness: No, sir, that is a separate facility. That is one of the five, which I mentioned earlier.

By Mr. Langdon:

Q. What is No. 2?

A. No. 2 is the Port Authority Grain Terminal and the adjoining Columbia Street Pier, which you can see also indicated in light purple in Gowanus Bay.

Q. That is below the Brooklyn-Port Authority Piers?

A. Yes, sir.

Q. Will you go on to No. 3, please?

A. The third marine terminal on the New Jersey side is what is known as the Hoboken Port Authority Piers, which is just north of the Holland Tunnel. I think you will see the piers marked A, B, C.

Q. What investment do you have in those piers?

A. $17 million.

Q. What is the next one?

A. The fourth is the property known as Port Newark, which is leased from the City of Newark, but is the respon-

[fol. 191] sibility of the Port Authority for development and operation. That is shown on Newark Bay.

Q. How do you measure the investment in that property?

A. As I recall, the total investment, as well as the commitments which we now have for work over there, would be about $47 million.

Q. Does that complete the five?

A. No. There is a fifth marine terminal which has not yet been developed, which is to be known as the Elizabeth

Port Authority Piers. It is immediately south of Port Newark within the property which is indicated as "Union County," also facing on Newark Bay, just south, in other words, of that waterway or that strip of water which forms the boundary line between Essex and Union Counties.

Q. This last property that you have just referred to, is it your plan or the plan of the Port Authority to construct piers and provide at that point a regular marine terminal?

A. It will be, yes.

Q. And what is the projected investment in that operation?

A. We don't have that yet. Actually, we are still acquiring property over there.

Q. I think the only facility that you didn't give your investment in is the grain facility at Columbia Street. Do you mind giving that figure?

[fol. 192] A. That would have to be an approximate figure, but I believe it is in the neighborhood of $3 million, mostly for rehabilitation work.

Q. Now, is it the desire and plan of the Port Authority to extend its holdings, if you call them that, of piers and marine facilities in New York Harbor?

Mr. Moerman: Objection, immaterial. That is not material, Mr. Examiner.

Mr. Langdon: I regard it as material, as indicating the future planning of the New York Harbor and its facilities, sir.

Exam. Boat: The objection is overruled.

The Witness: We have no plans beyond what I have already described to you.

By Mr. Langdon:

Q. What is the charter power or legislative power, perhaps, that you have to cover and authorize you in connection with this construction and maintenance and operation of these piers?

A. As I think I referred to this earlier, we are authorized, under the Port Compact of 1921, to develop marine terminals only whe we come to an agreement with the municipalities whic actually own the waterfront.

We have no power of condemnation, in other words, over waterfront municipal property.

Q. And these facilities, of course, once established and in operation, become tax-free?

[fol. 193] A. In the main, those properties have been municipal properties, part properties actually owned by the city. We have made agreements with the municipalities which own those waterfronts to pay to them what amounts to a rental for the use of their properties.

In the case of the Newark Airport and Port Newark facilities, as a package, we pay to the City of Newark, I recall, about $125,000 a year.

In Brooklyn, where we took over the waterfront property of the New York Dock Company, we made an agreement with the City of New York whereby we pay to the city approximately $600,000 a year, which represents exactly the amount of taxes the City of New York was receiving from that property prior to our acquisition.

Q. Mr. Gilman, once you have these piers in operation, or at least available, physically, do you undertake, then, to lease them to steamship companies?

A. Yes, sir.

Q. And what are the yardsticks that you apply in determining the rental assessed against the steamship companies for the use of these piers?

A. I wouldn't be able to give the exact description on that, because the responsibility for leasing these facilities is not my own. That comes within our marine terminals department.

[fol. 194] Q. Do you know enough about the situation to be able to say that you—the Port Authority, rather, undertakes to make these facilities self-sustaining?

A. That is correct.

Q. Do you regard that as a fixed policy of the Port Authority, namely to have your operations self-sufficient and compensatory?

A. The objective in any of our operations is that they will become self-supporting, always with the understanding that there may be a certain few years of developmental period in which they will not be carrying their full charges. But ultimately it is our objective that they become entirely self-supporting.

Q. That is regarded by the Port Authority as a sound principle to apply in connection with its operations at New York Harbor?

A. Yes, sir, for our own operations. Yes.

Q. For your own operations?

A. Yes, which is the only thing for which we are responsible.

Q. In your testimony, Mr. Gilman, you refer to New York Harbor on page 8 as an economic unit, and on page 4 as a port of many ports.

Do you regard it as important that the New York Harbor be regarded as an economic unit in all respects?

A. We regard that as a basic premise of the best development for this area, that it be an economic unit, single economic unit.

Q. Is one aspect of that position on the part of the Port [fol. 195] Authority that it would insist, for instance, on the same railroad rates to all parts of the New York Harbor and all deliveries within that harbor?

A. We regard that as essential, that there be a single type of rate structure applicable to the port district.

Q. You mean by single type of rate structure that you want the same rate applying on commodity X to Brooklyn Port Authority Piers as would apply to your facilities at Port Newark, commodity X originating, let's say, in Cleveland, Ohio?

A. For export-import movement?

Q. Yes.

A. Yes, that is correct.

Q. Does your position go to the point of representing fixed policy on the part of the Port Authority?

A. That is the general basis on which we have operated over the past 36 or 37 years.

Q. And you know of nothing to change that policy that lies in the future, so far as you can tell?

A. No.

Q. Now, before I leave these piers, Mr. Gilman, is it or is it not true in connection with these Hoboken facilities of yours that they are provided with tracks that run right out on the piers?

A. That is correct.

Q. And are those tracks presently covered up at the [fol. 196] present time?

A. Yes, sir.

Q. And there being—rather, the space which they occupy is being used by trucks?

A. That is correct, they are leveled off.

Q. And any rail traffic to and from these Hoboken piers of yours would be handled by lighter?

A. Or, I assume, truck in lieu of lighters.

Q. Trucking in lieu of lighterage or lighterage?

A. To the best of my knowledge, yes.

Q. Are there any rail tracks on any of these other piers of yours?

A. Port Newark has direct rail connections with three of the Trunk Line Railroads.

Q. But Port Newark also receives lighterage freight, does it not?

A. That is my understanding, yes.

Q. And trucking in lieu of lighterage?

A. Yes, sir.

Q. Now, starting, Mr. Gilman, at page 9 of your testimony, you refer to an economic study that was apparently made in your department, indicating that in excess of 3 million people in the New York Harbor area are dependent, directly or indirectly, upon the existence and operation of the harbor.

A. That is correct.

[fol. 197] Q. I think you said in accordance with that study that 430,000 people had jobs that existed only because of the port?

A. The port and its related facilities, as of 1953, which was the basic year in which this study was made.

Q. And your study further contemplated that each person whose job was related to the port, in turn, supported two others?

A. That is correct.

Q. And then each of them, in turn, supported dependents.

A. That is right.

Q. And the total that you got was, as I say, in excess of three million people.

A. Three million out of the total 13 million in the area.

Q. Do you think that those same ratios would exist at the other North Atlantic ports?

A. I wouldn't have any direct knowledge of that.

Q. Is it your contention in any way that these relationships vary with the tonnage handled at the port?

Mr. Moerman: I don't know that the witness is contending anything, Mr. Examiner. His testimony is supposed to be factual. I will do the contending.

By Mr. Langdon:

Q. Is it your testimony, then, Mr. Gilman, that these ratios that you have developed vary with the tonnage handled at the port?

A. It would certainly vary as tonnage is varied.

Q. Would it be your opinion that a port that handled [fol. 198] more tonnage than New York would have in excess of 3 million people dependent on the port?

A. Not necessarily.

It might depend on the various factors in which your tonnage is made up.

Q. Doesn't the character of the traffic have almost controlling weight in that connection?

A. I would say it wouldn't in some of these jobs and not necessarily in others. There are so many different jobs involved in the 430,000.

Exam. Boat: For example, grain tonnage; that wouldn't entail as much labor, would it, as general cargo?

The Witness: That is correct, not as much as general cargo.

By Mr. Langdon:

Q. How about coal traffic; would that involve many jobs?

A. I wouldn't know just what that would amount to. We don't handle much of that, so I am not familiar with the number of jobs involved.

Q. Well, I read you, Mr. Gilman, a paragraph from an article in "Shipping Digest," apparently a magazine published every week for transportation people in the New

York area. I read a paragraph from an article that appears in the issue of December 16, 1957, and ask whether or not you agree with it:

"The New York-New Jersey Port is the recognized leader in the handling of general cargo. This type of cargo pro- [fol. 199] vides more employment of longshore and other labor and more port facilities and services of other kinds than does the bulk cargo which is generally handled through mechanically operated and industrially-owned terminal facilities."

A. I would be in general agreement with that statement as it relates just to port jobs.

Q. Now, at page 11, Mr. Gilman, you refer to New York's decline from 28.6 percent of the total export-import tonnage to 14 percent.

Have you made any figures at the Port Authority which would indicate New York's relative standing over the years, relative to the other North Atlantic ports, in regard to the handling of general cargo?

A. We have, as to both general cargo, what is sometimes referred to as general cargo, and all other cargoes.

Q. Are there going to be introduced figures in that respect by Port Authority witnesses, or any other witness on your side of the case?

A. I am not certain to what extent the figures would be or are broken down. There are statements as to the total cargo which have moved through the port as compared to the other ports to the south.

Q. Now, it is true, is it not, Mr. Gilman, that limiting your answer now only to general cargo, both export and import, that New York in relation to the other North Atlantic [fol. 200] ports has not slipped in recent years?

A. Oh, no. No. Percentagewise, we have slipped very badly.

Q. I am limiting now my question to general cargo.

A. General cargo?

Q. And I am limiting the comparison to other North Atlantic ports.

A. I don't have the figures in front of me. I know from the standpoint of the U. S. as a whole we are declining,

and I believe we are also losing out in our share in comparison to the other North Atlantic ports.

Q. Have you any figures on that?

A. No, sir.

Q. I am limiting the question to the North Atlantic ports.

A. I don't have those figures in front of me.

Q. Now, at page 12 of your statement, you take the position that the primary reason—I think those are your very words—why your import-export tonnage is declining is the differential rate adjustment that is involved in this proceeding.

A. We are driven to that conclusion, inasmuch as we have invested substantially in improved facilities at the port. We have undertaken an active trade development port promotion campaign, as have the other ports, in both cases, and the tonnage, the share of tonnage is steadily eroding away from the Port of New York.

Q. Now, on page 12, you say that in the last analysis, if it [fol. 201] costs more money to ship via the Port of New York than via competing ports, the traffic will tend to move through the lower-rated ports.

Was that use of the word "tend" on your part deliberate?

A. Yes.

Q. Now, when you say "through the lower-rated port," what do you mean?

A. Those ports which enjoy a differentially lower inland rail rate.

Q. Does a lower-rated port, to you, mean only the dollars and cents that it costs to move traffic through a port? Is that all that you mean when you say "lower-rated port"?

A. That was the reference in this particular sentence.

Q. In other words, this sentence didn't take into account the service that is obtained for the rates that apply; is that correct?

A. This had specific reference to the actual rates charged on the inland rail movement.

Q. Without regard to service?

A. That is correct, yes.

Q. How can you tell whether a port is lower or higher cost, unless you take into account the service that is available at those ports?

A. The comments we have received from industries, shippers, have indicated that one of the most important [fol. 202] factors, certainly, in their decision as to the port, of routing, is the inland rail rates.

Q. Can you, as an economist, Mr. Gilman,—and I take it that you are an economist?

A. Trained as an engineer.

Q. Trained as an engineer?

A. Yes.

Q. (Continuing) —can you determine whether a port or any other transportation facility is lower rated or higher rated without taking into account the service?

Mr. Moerman: Now, Mr. Examiner, the witness testified about rates, some ports having lower rates than others. I don't understand the question. I don't think it is susceptible of an answer.

Exam. Boat: It is not clear to me, either.

Mr. Langdon: I will skip it.

By Mr. Langdon:

Q. Now, please go back to your map, Mr. Gilman. Up in the upper left-hand corner of the map—incidentally, this was prepared by the Port Authority, was it not?

A. Yes, sir.

Q. (Continuing) —there is the legend, or descriptive title, "Save Time—Save Money. Ship via Port of New York, World's Greatest Port."

Will you please tell us how you save money by shipping through the Port of New York?

[fol. 203] A. Well, there are many factors, obviously, involved in shipping facilities. In the routing of freight, this is the type of promotion which every port undertakes in trying to put their best foot forward insofar as the impact on the shippers, the people we are trying to do business with.

That does not make the point of saving money on the inland rail rate, certainly, because that would not apply at New York.

Q. How do you save money, then, at the Port of New York? Is this a misleading title, or is it accurate?

A. No, it would vary with individual shipments which come from a tremendous variety of producers and industries throughout the Midwest, the territory that is involved in this particular proceeding. And certainly it is our belief that on some of those shipments they can save money, which may be dependent on the facilities that are available at the Port of New York, the services—

Q. The service that is available?

A. That is right.

As to those facilities and services, undoubtedly, they excel, for certain commodities and certain shipments, at other ports.

Q. The frequency of service, perhaps?

A. That is one factor.

Q. Direct service, perhaps?

A. What do you mean by direct service?

Q. Well, of course, that bears on the ocean transit time. [fol. 204] Don't you advertise that from New York, ocean sailings involve less transit time than from the out-ports, as you designate them, Philadelphia and Baltimore?

A. You mean on the ocean trip?

Q. Yes.

A. Not to my knowledge, unless you are referring to the direct sailings which we have at New York and which the other ports also enjoy.

Q. That is exactly what I am referring to.

A. And the other ports enjoy direct sailings, too.

Q. Do you know how they compare for direct sailings at New York with direct sailings at Baltimore and Philadelphia?

A. I don't have those figures.

Q. You know you have the great majority of the direct sailings, don't you?

A. I would say we have the majority. I don't know what the preponderance is.

Q. So that you are still firm in your conclusion that you save time and save money by shipping via the Port of New York?

A. That is certainly true on some shipments. It would not be true on others.

Q. Do you designate in this map or in your distribution of this map the shippers who can gain by shipping through the Port of New York and those who will lose money by shipping via the Port of New York?

[fol. 205] A. No, we wouldn't try to break that down and indicate that on the map or a promotional piece of literature.

Mr. Langdon: That is all I have.

Mr. Price has some questions.

By Mr. Price:

Q. Mr. Gilman, at page 6 of your testimony you refer to the fact that there are 200 piers in New York Harbor. Are they all steamship freight piers?

A. Yes, what we would refer to as deep sea facilities.

Q. Are some of them passenger piers exclusively?

A. Yes.

Q. Are they all in good condition, operating condition?

A. They vary as the spectrum.

Q. You say that there are over 4,000 shallow-draft harbor vessels, including tugboats, car floats, lighters, barges, scows. Do they also include intra-harbor vehicles like coal barges, gravel barges? Do they not?

A. I assume they are within that 4,000 figure.

Q. You say that you have 100 heavy lift derricks with individual lifting capacity up to 250 tons. How many have a 250-ton capacity, do you know?

A. I believe one or two, actually, in that top capacity.

Q. Do you include in that figure your deck lighters and steam lighters?

A. Yes, they would be in there.

Q. Referring to your exhibit identified by D.G., the [fol. 206] tonnage figures shown there include all import and export traffic, do they not?

A. That is correct.

Q. Do you agree, then, that there is traffic represented in these figures which is not involved in this proceeding? Perhaps you might state what your idea of the issues here is—

A. I don't know just what commodities or what portion of that would be involved in this particular proceeding. Typically included in here are, as I recall, about 17½ million tons of tanker cargoes which move just into the refineries in the New York-New Jersey Port district and never get into this differential territory.

Q. There would be other traffic that would not move to or from differential territory, would there not?

A. That is correct.

Q. I note from that same exhibit that New York's share of the total U. S. commerce in 1940 was approximately the same as in 1923, and even higher than in 1936, -7 and -8 and -9. And that according to this exhibit, New York's share did not start to decline until after World War II.

A. Well, I would say that from, certainly beginning with the year 1940, and through 1946, there was a great distortion of figures as a result of shipments overseas, necessarily part of our Government-aid, even prior to our joining the war in 1941, late '4.

[fol. 207] Q. That is correct. That is why I didn't even discuss the war years.

Would the fact that New York's decline in the total commerce, according to your exhibit, did not begin until after World War II, suggest to you that there may be factors other than the differential which have influenced that decline?

A. Mr. Price, my figures would indicate that generally we are starting to decline about 1935 or 1936. We had already slipped in 1937, 1938, 1939, lower than in 1936, and then from 1940 through '46 is, as we agreed—the share is quite distorted by the war shipments. So, I would say that we were beginning to slide and lose our share starting in the late 1930s.

Q. Except for the year 1938, was there any pre-war year that was not higher than your 1926 participation?

A. I am not sure that I get your point.

Q. As I read your exhibit, in 1926 New York had 24.5 percent of the total.

A. Which was a bad year, I might say. As I recall it, there was a very heavy movement of coal overseas in con-

nection with conditions in Europe which tended to pull down our share.

I think through that middle 1920s area, that again may be a distorted figure.

Q. I notice in 1940 your participation was 3 percentage points greater than in 1939.

A. Than in—

[fol. 208] Q. 1939, the preceding year.

A. Again I refer to the fact that shipments were moving overseas to our—those countries which were to be our allies in World War II.

Q. You, also, make the statement at page 12 that the diversion of traffic from New York is continuing at an accelerated pace. Have you see witness Gilbert's exhibit J.G. 11?

A. I have read it.

I am not familiar with the detail.

Q. Is it not a fact that according to that exhibit New York's share increased, 1956 over 1955, whereas the share of the other North Atlantic Ports decreased during the same period?

A. On exports but not imports.

Q. How would you reconcile your statement at page 12 with the export figures there?

A. Well, I would never feel that you can take two consecutive years and develop a trend from that. I think it has to be a longer period of time.

Q. Do you agree that the diversification of industry in this country has had any bearing on this movement of traffic through New York, comparative movement?

A. Do you mean the share?

Q. Yes.

A. It certainly is a factor, as a share of the total United States. I would not say that that is necessarily true in [fol. 209] the North Atlantic range, we are a more mature, older economy, all of us have shared in the early growth of this country.

Q. Do you think the Gulf South Atlantic Port competition has had any bearing on the New York situation?

A. You mean on the percentage share of the total United States?

Q. Yes.

A. That is certainly a factor.

Q. I observe from your exhibit C-1 that New York in the past ten years has spent about 75 million dollars in the construction of new port facilities and $41 million in modernization.

In view of the rate handicap which you apparently feel the port has, do you consider that was a prudent investment?

A. You understand, Mr. Price, that much of that work is reconstruction of old facilities, replacement of piers that may be fifty, sixty or seventy or eighty years old and so it is not an expansion of actual facilities; it is more a replacement, much of that investment.

We certainly feel that it is vital that the port be modernized and that investment on that extent is a good one.

Q. In other words, the $75 million does not cover only [fol. 210] new piers, for example?

A. I am not sure that I find your 75 million dollars, Mr. Price. I am looking at Exhibit C-1, page 1.

Q. Yes, 54 plus 19.

A. That is right, 54 plus 19.

And that means typically, the tearing down of two of the ancient piers in Hoboken and replacing them with new facilities.

In other words, good new facilities in place of poor, old ones.

The same would be true at Brooklyn, of course.

Mr. Price: That is all, thank you.

Mr. Walker: I have one question.

By Mr. Walker:

Q. How long did you say you had been with the New York Port Authority?

A. A little over 20 years.

Q. 20 years. And in what year did the most export and import traffic move through the Port of New York?

A. Of course it would be the war years.

Q. Are you sure of that?

A. No, I am not. Certainly without a close check I am not certain.

Mr. Moerman: Do you mean in tons, Mr. Walker?

Mr. Walker: In tons.

The Witness: In 1956, the total which includes, as I [fol. 211] say, 17½ million tons of tanker cargoes, was the largest.

By Mr. Walker:

Q. The largest in history?

A. Since 1923, which is the period—on which we have figures.

Q. Have you seen your figures for the first nine months of 1957?

A. I do not believe I have. I notice the first six—I am familiar that we have a report on the first six months.

Q. And do you know how that compared with the first six months of 1956?

A. I would not be able to do it through memory.

Q. Larger, was it not?

Mr. Moerman: Put a witness on, Mr. Walker, and do not try to get it out of the witness when he says he does not know.

Mr. Walker: I asked him if it was not larger. I asked him if it was not larger, the first six months of 1957 over the first six months of 1956.

The Witness: My recollection is that it is about a one per cent increase. That is my recollection.

By Mr. Walker:

Q. Do you agree with the other witnesses, Baylis and Gilbert, that your decline has been more accelerated since the war?

A. I am not familiar with their testimony to that effect.

Q. You don't know whether it is a fact?

A. No, I would not, without studying the figures.

[fol. 212] Q. Do you know how much export and import tonnage moved between New York and differential territory?

A. I don't have those figures.

Mr. Walker: That is all.

Exam. Boat: Is there further cross?

(No response.)

Redirect examination.

By Mr. Moerman:

Q. Mr. Gilman, you were queried about some so-called general cargo; does New York have any import iron ore?

A. As I recall about three or four hundred tons.

Q. How much export coal does New York have?

A. I do not have those figures.

Q. Did New York obtain equalization with the North Atlantic ports on grain in recent years after some extensive litigation?

A. We did, out of the lake.

Q. Has New York regained its former position in the grain trade as a result of that equalization?

A. My best recollection is that we have not.

Q. What is the situation with respect to the grain out of New York? Is it substantial, as compared with Baltimore and Philadelphia?

A. My recollection is it is substantially smaller.

Q. Does grain move outbound by truck through the Port [fol. 213] of New York, to the extent that it moves?

A. Outbound by truck?

Q. Yes.

A. Export grain?

Q. Yes, does it move by truck into New York?

A. No.

Q. Do you know whether any iron ore moves by truck into the interior from any port?

A. I am certainly not familiar with that.

Q. Does general merchandise move from New York into the interior, import by truck?

A. Yes.

Q. Is there a substantial volume of it?

A. I would not know what comparative figures are, as between rail and truck.

Q. Is export general cargo susceptible to trucking from CFA to New York?

A. Yes.

Q. Does it move in substantial volume by truck from CFA to New York?

A. Again I would not have the figures.

Q. Is there any bulk cargo that you know that can move export from CFA to New York by truck, any that you ever found out about?

A. I have certainly never heard of any.

Q. Is there any bulk cargo that you know about that [fol. 214] moved inland by truck from CFA?

A. Again I have never heard of any.

Q. Are the railroads which are here the respondents serving the Port of New York in possession of a monopoly of the merchandise export and import traffic to and from CFA territory?

A. I would certainly say by no means.

Q. Do you know whether or not the railroads at Baltimore and Philadelphia share their export and import bulk traffic with the trucking lines?

A. I certainly never heard of it.

Mr. Moerman: That is all.

Recross examination.

By Mr. Walker:

Q How do you know that New York has a monopoly on traffic to and from differential territory, if you do not know what the movement is?

A. Well, I certainly would know that merchandise freight does move through Baltimore and Philadelphia on the basis of their own figures, and I would certainly come to the conclusion that it is not all moving by truck.

Mr. Walker: Thank you.

Mr. Moerman: One more question.

By Mr. Moerman:

Q. The increase on your exhibit D.G. about which Mr. Walker asked you, from 1946 on do you know what is attributable to, the rise of 22 million tons to New York, to [fol. 215] 36 million tons?

A. The increase in tanker cargo tonnage accounts for more than the total increase in the total volume.

In other words, as I recall the increase in tanker tonnage amounts to more than—between 11 and 12 million tons, whereas the increase in total tonnage, by these figures, is less than 11 million.

Q. To what extent, if you know, does any of this tanker tonnage move inland by rail to CFA?

A. I certainly would never think that any of it would move in.

Mr. Moerman: That is all.

By Mr. Macleay:

Q. Did I understand you to say, Mr. Gilman, that you had made no investigation of the comparative movement through the Port of New York to and from CFA territory by rail or by truck?

A. I do not believe I said that.

I did not make it, myself.

Q. Have you made such an investigation or was such an investigation made under your direction?

A. I could not say.

Q. You cannot say whether such an investigation was made under your direction?

A. Well, it was not—it would not be made immediately under my direction.

[fol. 216] Q. Have you any knowledge of any such investigation?

A. I do not have knowledge of that.

Q. Do you have any knowledge of the relationship in the movement, how much of it is by truck as compared to rail?

A. No, I do not have figures on that.

Q. Do you know whether or not the water carriers publish differential rates?

A. Not to my knowledge.

Q. Then how can you possibly assess, with any degree of accuracy, the effect of the rail differentials upon your general cargo traffic?

A. You mean, I, personally, or the—

Q. How can you? You are the witness, Mr. Gilman, you are the man I am asking. You have attributed to this differential what you claim is an adverse effect upon New York's tonnage.

Now, I am asking how you can possibly have measured that effect when you have no knowledge of the respective movements by rail as compared to truck, and you know that the trucks do not maintain a differential system?

Mr. Moerman: I do not think that follows, Mr. Examiner, at all, that if the witness does not know the relative amount of truck versus rail, that therefore he is unable to assess the effect of the rail differentials.

He has already testified the basis for his assessment, and that is the knowledge he has gained in his work.

[fol. 217] Mr. Macleay: I refer to the witness' testimony at page 12 of his statement, where he says, "We have given consideration to all possibilities."

He goes on to say that they are driven to the conclusion that New York's rail rate handicap is the primary reason why the import-export tonnage has been steadily declining.

I might add I assume that has been amended to what he deems New York's share of the export-import traffic is declining.

I am trying to determine what is the basis for their determination that the rail rate handicap, as he terms it, is a preliminary influence.

If he cannot answer the question, why he can't answer the question.

Exam. Boat: Can you answer, Mr. Gilman?

The Witness: As I indicated earlier, we have statements from important shippers in the midwest who tell us directly that the inland rail rate is the reason that they are using Baltimore or some of the other ports as compared to New York.

By Mr. Macleay:

Q. Have you made any measurement of the traffic involved in these relative movements? Do you know how much rail traffic there is between the Port of New York on export-import traffic and how much rail traffic there is between these other ports and CFA territory, or differential [fol. 218] territory?

A. I do not have any figures direct.

Q. Do you have it indirect?

Do you have any figures on it?

A. I, myself no.

Mr. Moerman: Are you familiar with the iron ore situation?

A. Generally, yes.

Mr. Moerman: Mr. Macleay knows about that.

By Mr. Macleay:

Q. Are you familiar with general cargo, and that situation, the 8 or 9 million tons of general cargo that the Port of New York handles every year, do you know how much of that goes to and from CFA territory?

A. No, I do not have that figure.

Mr. Macleay: That is all.

Mr. Moerman: We have another witness, Mr. Macleay, who will deal with that subject.

Exam. Boat: No further examination of this witness?

OFFER IN EVIDENCE

Mr. Moerman: No further examination.

If there are no further questions, Mr. Examiner, I would like to offer witness Gilman's testimony—his exhibits which have been marked exhibit 15.

Exam. Boat: Very well, they have been marked and are received as exhibit 15.

[fol. 219] (Exhibit No. 15, witness Gilman in support of Respondents was received in evidence.)

Exam. Boat: You are excused, Mr. Gilman.

(Witness excused.)

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: We will adjourn for lunch until 1:30 p.m.

(At 11:57 a.m. the hearing was recessed until 1:30 p.m.)

[fol. 220]

Afternoon Session

(1:30 p.m.)

Exam. Boat: Come to order, gentlemen, please.
Will you be sworn, please, Mr. Gilbert.

J. GILBERT was sworn as a witness and testified as follows:

Mr. Moerman: Mr. Examiner, I should now like to offer for identification the verified statement of Mr. Jerome Gilbert whose title is trade economist for the Port of New York Authority.

His statement consists of 10 pages and is accompanied by 13 exhibits.

Exam. Boat: That may be identified as exhibit 16.

(Exhibit 16, Witness Gilbert in support of Respondents is marked for identification.)

Mr. Moerman: Mr. Examiner, I tender the witness for cross examination.

Mr. Langdon: Sir, before asking questions of the witness, I think I should state that the interests I represent—we represent over on this side of the table—are prepared to excuse Mr. F. W. Dunham, Jr., General Manager Albany Port District Commission. He is listed at the top of page 4 of the schedule.

Exam. Boat: I take it that in view of Mr. Langdon's statement, he can be excused, if he is here.

[fol. 221] Mr. Langdon: Yes, sir.

Examiner Boat: Off the record.

(Discussion off the record.)

Cross examination.

By Mr. Langdon:

Q. Mr. Gilbert, would you be good enough to turn to your exhibits, J.G. 7 to 10, inclusive. Do you have them before you?

A. Yes, sir, I have those in front of me.

Q. Now, in the case of the export figures given on J.G.-7 and JG-8, is it your purpose to arrive, in the column next to the last over on the right, at the general cargo exports, as distinguished from total exports through both the United States and New York?

A. No, that was not my specific purpose.

The purpose of the case, as we all know, is the amount of traffic moving to and from the CFA territory to the various North Atlantic Ports.

When we went to prepare the exhibit, we had only had part of the picture of the precise rail tonnage moving to and from the CFA territory which is included in my last exhibit, and since that time we have ascertained quite specifically that there is 1,900,000 additional tons moving to Baltimore than the Port of New York from the CFA territory and moving by rail.

One of the reasons why I am saying this quite specif- [fol. 222] ically is that when you take the concept of general cargo you come under there—many people feel that it has a specific meaning.

It means packaged goods. However, one of the largest components in there, both for port of New York and for the other ports is iron and steel scrap, which I think all of those in the transportation business know is handled mechanically.

Another component is sugar. Sugar is a bulk commodity, to all intents and purposes.

I can go down and enumerate commodity after commodity on which there is complete unanimity among those who handle cargo.

The general cargo is a general phrase which you use as you first address any problem of foreign trade.

Q. What do you mean, in a few words, Mr. Gilbert, when

you use the phrase as you have on these exhibits, "general cargo, exports"?

A. The term "General Cargo" as we used it is just a rough approximation of dividing cargo which, in terms of this case, however, we felt were not generally germane to the case, which is rail traffic, so far as it went.

Q. And the question, Mr. Gilbert, you have not answered. Will you do so?

What do you mean when you say and use the phrase on this exhibit "general cargo exports" now, do you mean the [fol. 223] exports excluding the principal bulk commodities?

Is that what you mean?

A. I do not.

There is implicit in the statement "bulk cargo" that there is all the cargo which is under bulk cargo here and which is used by the other ports, that all the bulk cargo is under the definition of bulk cargo and whatever general cargo is, is under general cargo.

As I pointed out, I think, if you look at the figures of New York or any port, you would realize that this term in general usage is not applicable to the commodities using scrap, sugar, lumber is in there—I could run down the whole list.

Q. Are you sorry you made this exhibit now?

A. I would say at the time, in the tools that we had, it was the best that we had. Since then, as you can see the exhibits, we have finer tools and it is that which I address myself to.

Exam. Boat: Now, are we to understand that the term "general cargo" embraces all traffic that is in this case, excluding the coal, coke and iron ore that we referred to?

A. No, not even among ourselves, Mr. Examiner.

Let me give you one example: We are speaking of definitions and I think it goes to the crux of it.

[fol. 224] The Port of New York, under its definition of bulk, speaking of definitions, excludes coal, grain and bulk petroleum, so does the Port of Philadelphia.

However, under our general cargo we have such things as flaxseed. This we call general cargo. We also, going

back and developing this concept further—I am saying this to get a feel for what we are dealing with—under bulk cargo we include clays and earths, sulphur, gypsum, nitrates. The Port of Philadelphia does not.

Exam. Boat: The flaxseed you mentioned a moment ago, that is not considered bulk because it moves in bags, generally, is that it?

The Witness: No, there is a concept, which from a long time ago, meant packaged goods. Take sugar which everybody classifies as general cargo, does by and large move mechanical and the trend is more and more so. Certainly in the Port of New York, iron and steel scrap, we include in general cargo because at one time the volume was small and there was an element of hand labor.

Scrap exports are growing and because the volumes are not large not only at the Port of New York but for all ports, it is handled by mechanical means.

Bananas are included on the import side. We call this general cargo, so do all the other ports.

There is hardly any hand labor involved. This can be [fol. 225] multiplied.

The word, or the concept "bulk cargo" and "general cargo" are something which grew among operating men and it helped them to address themselves to a problem.

But when you get more specific, into a case and you begin to handle commodity by commodity, you soon come up to the concept that what is packaged and what is not packaged, what is bulk and what is general, is a concept that has really become somewhat archaic.

Mr. Langdon: Are you finished, sir?

Exam. Boat: Yes.

By Mr. Langdon:

Q. Mr. Gilbert, for the purposes of this record, are we to understand that the figures appearing in the next to the last column of your exhibits J.G. 7 through 10, inclusive, represent your notion of general cargo exports or not?

A. Would you repeat that question?

Q. I will be glad to repeat it.

Are we to assume for the purposes of this record and this proceeding that the figures appearing in the last and next to the last columns of your exhibits J.G. 7 to 8 represent general cargo exports?

A. The question is: What is general cargo?

All we say under those figures—

Q. I am just asking you—now, you can answer that yes or no.

[fol. 226] Are we to assume that this title means what it says or are we to assume that it means something other than what it says?

Mr. Moerman: Now, Mr. Examiner, the question is as I see it, that counsel and the witness have a disagreement about what general cargo means. Now, I think it proper for counsel to find out from the witness what general cargo means.

The witness has told him.

Mr. Langdon: He has designated here certain figures as general cargo exports.

Now he has spent 15 minutes telling us that that is not what those figures represent at all.

I am trying to find out what they do represent.

Mr. Moerman: The exhibit shows on its face that there is grain, coal, other minerals and tanker cargo.

The Witness: Everything else is general cargo including scrap, flaxseed, bananas, and so forth.

By Mr. Langdon:

Q. Now, turning to J. G. 9 and 10, dealing with imports, am I to understand then that the figures appearing over on the righthand side represent general cargo imports?

A. The term general cargo imports excludes everything except those other minerals, ores and tanker.

Q. Now, Mr. Gilbert, apparently you thought that general cargo imports and general cargo exports were meaningful, at least from the point of view of comparing New York with South Atlantic and Gulfports, and I refer to J. G. 11.

[fol. 227]

A. The purpose there, or one—

Mr. Moerman: There is no question.
Mr. Langdon: Can you answer the question?
The Witness: Can you repeat the question, please?
Mr. Moerman: There wasn't one yet.
Exam. Boat: Please read the question?

(Question read.)

The Witness: The answer is yes.

By Mr. Langdon:

Q. Why did you not make that same comparison over the same period of time, namely, 1923 to 1956, for the North Atlantic Ports?

A. There are three reasons: One is that the data which we had, which is based on that of the Department of Commerce, for that reason is not as detailed, does not go back to 1923.

Point 2: The issue of differential rates which applies to the North Atlantic Ports, and we wanted to exclude iron ores since that is not an issue in this case, also is applicable in the area to the South Atlantic and Gulf.

Q. Here you say that you could not have made, with regard to the North Atlantic Ports, the same comparison over the same period of time—strike that question.

Am I to understand that the material with which to make the same comparison for the North Atlantic Ports as in- [fol. 228] dicated in your J.G. 11 is not available for the period of time indicated in your exhibits J.G. 7 to 10 inclusive?

A. Our records, which have been developed, only go back to around 1955—we have coastal regions, if I may explain.

In other words, we take the entire South Atlantic. But I could not break it as we have it here, into North Carolina, South Carolina and Georgia districts.

That is the reason why this was on the more current figures, while the other includes an area going back to 1923.

Q. What is the base for these figures? They are the Army Engineer figures, are they not?

A. No, ours are the Department of Commerce, which is the original source.

Q. And they do not go back to 1923?

A. I can say this with definition: We could not go back with a complete breakdown for those ports for that period of time using the Department of Commerce figures.

Q. Now, turn back to J. G. 7.

What commodities—and my question is directed now to column 7—do you include in "other minerals"?

A. If you will bear with me, I will get the precise definition.

The omissions are sulphurs, phosphates, iron ore.

Q. Now, what is included under Tanker cargo?

A. On which definition is that?

[fol. 229] Q. That is on the same J. G. 7 in column 8.

A. The definition there encompasses petroleum, coal tar products—put it this way: It is petroleum and coal-tar products and molasses for the period 1941-1945.

Q. Now, what does, in column 9, the designation "Foreign Aid Shipments" cover?

A. I hope you will bear with me, if you work with the data you will discover the government changes its definition about every two or three years and this is a problem for compatability of data.

Q. I am sure it is complicated.

A. But our job is to make it simple.

The definition which they have as Department of Defense controlled cargo under foreign aid programs and special category cargo. There is no data prior to 1948.

If you want a more precise one, you will have to speak to the people who work with it.

Q. Now, turn to J. G. 9.

A. Surely.

Q. What is included under "Other minerals"?

A. That is on the import side, is it not?

Q. Import side, column 5.

A. Other minerals, clays, gypsum, nitrates.

Q. And what is included in column 6 under "ores"?

A. Iron, manganese, chrome, bauxite, copper, lead, ilmenite.

[fol. 230] Q. Column 7, tanker cargo, is that the same as comprehended by tanker cargo in your export exhibits?

A. No, there the definition is a little more precise in the sense that it encompasses only petroleum products.

Q. Only petroleum and with the exception of the foreign aid shipments which you say go back only to 1948, am I to understand from you that the Department of Commerce figures do not permit a separation or showing of the character that you have in this exhibit no. 2, but limited to the North Atlantic ports?

A. I would say this: The Port Authority has spent in excess, well into five figures to derive this data, and as we went back it got more and more expensive. It is quite feasible that it could be done, if money was no object.

Q. What purpose did you undertake that, this work for?

A. It is the function or one of the functions of my section at the Port of New York Authority, to survey and analyze the flow of foreign goods through the Port of New York and the relationship of this trade to the other competing ports.

Q. But yet you did not make these comparisons with regard to the North Atlantic ports, your competitors in the same range as your own port, is that correct?

A. No. The choice was basically on this criteria: We were interested in what we felt is our main competitors. [fol. 231] They encompassed Boston, New York, Philadelphia, Baltimore, Virginia. The South Atlantic Ports, up until very recently, I would effectively say were not real competition. We then went to Galveston, Mobile, New Orleans and even the principal ports on the West Coast.

But times change and with the advent, the promotion of the ports on the South Atlantic, we then began to feel that it was worth our time and our effort and so we started keeping the figures, though we found it was prohibitive, at least on our initial investigation to develop a list or a historical series going back to 1923.

Q. But you did not keep the figures with regard to your principal competitors on the North Atlantic Coast.

A. That is not true.

We have the figures for our competitors.

Q. You have the figures?

A. Yes.

Q. In other words, you have the figures with which you

could construct a showing such as you have in J. G. 7, 8, 9 and 10 but limited to the North Atlantic Ports?

A. Based on the data that we have—

Q. May I have a yes or no answer to that?

A. The answer is definitely yes.

Q. Yes?

A. Yes.

[fol. 232] Q. Now, Mr. Gilbert, turn to your exhibit J. G. 13.

A. Yes.

Q. Now, where did these figures come from? You say they came from the four railroads?

A. Yes, sir.

Q. Will you indicate who, in each railroad, gave you these figures?

A. I could not give the names at this time.

I would say with no equivocation, that the data was given to us by the railroads—and if I were to see various of the lawyers and the men when we had a joint meeting—since we at the Port were interested in the over-all picture, I was called in to bring together the total picture of each of the roads which are indicated under there, and this can be substantiated.

Q. Did you hear the testimony on Monday, at least on the part of one railroad, that no 1956, calendar year now, figures had been compiled for export and import traffic between New York and differential territory.

A. On Monday I spent 13 hours coming down here on the Pennsylvania Railroad.

In that sense it is correct, these are not—these are statistical years, they are not calendar years.

Q. Well, what do you mean by a statistical year now?

A. It is the difference between a fiscal year that the [fol. 233] government has for its accounting purposes, in contrast to a calendar year that begins on January 1 and ends on December 31st.

Q. Then this should be—is that true of 51? A. It is true for both periods.

Q. Well, you mean that these tonnages you show here for 1951 are really not for 1951, but are for a part of 1950 and 1951, or are they part 1951 and part 1952, or what are they?

A. They are part 1951, the statistical year, if we use that definition, 52-52, 55-56.

Q. Did the railroads supply you with these 1951-1952 figures?

A. That is correct.

Q. So that 1951 includes the year that follows, 1952 but 1956 does not include the year that follows, on the contrary, it includes the prior year?

Is that what you meant to say?

A. No, we were speaking of 12 successive months.

The period of 1956, for example, encompasses the period from 8-1-55 to 7-31-56.

Q. What is a statistical year?

Is it a year beginning July 1? Is it comparable to the government fiscal year?

A. No, it is any 12 successive months which would comprise a year.

[fol. 234] Q. Are these successive months?

A. They certainly are.

Exam. Boat: Does the 1951-1952 period begin with the same corresponding month?

The Witness: That is right.

I am more positive about the 1956—I am definite about the 1955-56 period since I have more occasion—the same method of approach was used for the other period, Mr. Examiner. I would have to check the other time period.

Mr. Colgren: I think perhaps I should clarify the record. The statistics for 1951 are for the calendar year 1951.

Mr. Langdon: Are we getting the testimony now or is this—

Mr. Colgren: Excuse me. I withdraw my comment.

Mr. Langdon: So, Mr. Gilbert's testimony is incorrect, is that right?

The Witness: As I said, I am not certain about 1951. I am definitely sure that it was 8-1-55, 7-3-56 for the latter period.

By Mr. Langdon:

Q. Who handed these figures to you?

A. I worked with the railroads.

Q. Who did you work with?

A. I do not recall the names. But I can give an example, in one case it was Mr. Colgren of the New York Central and [fol. 235] Mr. Keefe who was the man on the job handling it for the New York Central.

Q. Have you tried, Mr. Gilbert, or have you undertaken to reconcile your figures for the year 1955-1956 with the figures given in Mr. Crookshank's testimony for that same period?

A. I know nothing—I was not here. I know nothing about Mr. Crookshank's testimony.

Q. You know nothing about the figures he used in his testimony?

A. I have no occasion to see it.

Q. The answer is no.

A. The answer is no.

Q. Now, Mr. Gilbert, the Department of Commerce publishes every once in a while, does it not, figures which compare the value of the export-import traffic moving through the several ports?

A. They do.

Q. Have you any figures using that criterion as a measure of the traffic through these ports?

A. We could do—now we do not use the dollar criteria for the flow of traffic because it is only—it is of no concern to the people in the transportation business. They are interested in the tonnage, since that is what they are selling.

Q. Is it of no concern to the Port Authority as to the value of the tonnage moving through New York?

[fol. 236] A. It would be of concern to the business community wherever they are in the import-export trade.

Q. I did not ask you about the business community, I asked you about the Port Authority. Doesn't the Port Authority, itself, repeatedly refer to the value of the traffic moving through New York, as compared with the value of the traffic moving through the other North Atlantic Ports?

Don't you compile the figures?

A. I believe the Department of Commerce compiles the figures.

Q. Do you bring them together for the review of your Port Authority people?

A. We do.

Q. But you have not seen fit to produce them in this case?

A. The—

Mr. Moerman: I did not think they were fit to produce in this case, because what this case is about is railroad tonnage, and freight that produces revenues for the railroads.

I was the one who saw what was fit to produce here, not this witness.

Mr. Langdon: That is very revealing. I had understood that the railroads have had a preference for high grade traffic, but maybe that is wrong.

Mr. Moerman: High grade traffic that moves by truck, [fol. 237] that does not bring them any revenue like iron ore—

Mr. Marbury: I thought this case was not about iron ore.

Mr. Langdon: It isn't in this case.

Mr. Moerman: I know, but it is moving on the B & O and not the New York Central, and that is why the New York Central is here.

That is why we are here.

Grain is moving through Baltimore and not through New York and that is why we are here, too.

Mr. Rongartz: I think you have your cases confused, Mr. Moerman.

Mr. Foley: Mr. Examiner, equalized rates are being sought on Iron Ore, currently, and I do not think that can be ignored.

Just because the two cases are not consolidated, does not make iron ore irrelevant.

Mr. Marbury: Would you like to consolidate them? We would be glad to consolidate them.

Mr. Moerman: I think it is about time we stopped talking about ports and started talking about railroads.

Mr. Marbury: The ports have rights, too.

Exam. Boat: Let us confine ourselves to questions and answers here.

Mr. Langdon: Yes, I think that would be a good idea.

[fol. 238] By Mr. Price:

Q. Mr. Gilman, in discussing your J. G. 4 you state that the significance of Philadelphia's growth, as you put it, in the share of total U.S. foreign trade is—that its growth started at the end of World War II and has continued to the present time.

How do you account for the fact that Philadelphia's growth did not begin until after World War II?

A. That is exhibit 4?

Q. Yes, sir.

Mr. Welsh: What exhibit are you discussing, sir?

Mr. Price: J. G. 4.

The Witness: What I say about Philadelphia applies to all ports. The composition of the goods moving in foreign trade has changed radically.

The phophecies of the Paley Commission about the importation of raw materials are no longer prophecies they are facts, and that includes a whole range of raw materials.

We think of this country as an exporter of manufactured goods. But if you remove the volume of foreign goods moving to Canada and Mexico, which encompasses close to 30 per cent of all the foreign trade of the United States, you will discover that the movement of so-called manufactured goods of the United States in foreign markets is continually declining, and those on both the import and the export side are raw materials, and to a lesser extent, semi-finished [fol. 239] goods.

Mr. Price: Will the reporter read the question to the witness?

(The question was read.)

The Witness: The answer is the change in the composition of foreign goods, or the goods moving in foreign trade.

By Mr. Price:

Q. What, in your opinion—why, in your opinion, did not the rate differentials you are here complaining of in-

crease Philadelphia's share of the traffic prior to World War II?

A. Well, let us speak about a specific commodity, if you would.

Q. I am asking you about the whole range of commodities, all commodities are involved here.

A. Then I only repeat what I said before, unless we go into particulars.

Q. That is your answer to that question?

A. Definitely.

Q. Your J. G. 11, that compares certain ocean-borne tonnage figures for 1955 with those for 1956. What is the significance of that comparison?

A. What is the number of that exhibit, please?

Q. 11.

A. The purpose of that exhibit was to show that on a range of goods the effect of the differential on other than [fol. 240] the bulk commodities which we have enumerated, was being felt at the South Atlantic and the Gulf as well as on the North Atlantic.

Q. Does not your exhibit show that in so far as exports are concerned, New York's participation increased and the other North Atlantic Ports decreased?

A. Yes, it does show that.

Q. Do you think that has any significance?

A. No, it does not have any significance, in terms of just the short run. I mean you are speaking of one year to another; if you wish, I will go into that in more detail.

Q. That is the question I originally asked, what significance does a one-year comparison have in your opinion?

A. As I explained, I would have loved to go into it in more depth but we did not have the data for it.

Q. J. G. 13, you make certain comparisons, 1951 versus 1956. It is a fact, is it not, that 1951 was a war year?

A. It was.

Q. Do you think that would affect the validity of your comparison?

A. Definitely not. When you look at the growth of foreign trade between the two periods I think you find I was conservative.

Q. In your opinion should we compare tonnages moved

through New York during 1941-1945—do you think those [fol. 241] figures have any particular relevance?

A. If you would explain what relevance is relevant to, I might say yes.

In other words, you cannot take it in abstract.

Compared to another war year, it may be significant.

Q. You are saying that traffic moved during the war periods, the amount has significance in this proceeding?

A. In this proceeding, no.

Q. Why, then, did you use a war period in J. G. 13?

A. The Korean crisis, which I believe is the correct terminology, was quite different from a war period. It was a high period, and if anything it would be biased against us.

In other words, I was choosing a high period. If I wanted to accentuate it, I would have taken a period where the volume of foreign trade was less.

This was dictated by the availability of data.

Q. You say 1951 was a high period, correct?

A. I believe so.

Q. 1956 was a low period?

A. No, I am saying if I wanted to bias it, I would have chosen 1949, where the volume of trade was down.

Q. Did you ask for these data or did the railroads give you what they had?

A. The Port of Authority was cooperating, and we were influenced by the problems of the railroads.

[fol. 242] Q. Could you answer my question, please?

A. The period of time was chosen by the railroads.

Mr. Price: That is all.

Mr. Walker: I have a question or two, if I may.

By Mr. Walker:

Q. On your exhibit J. G. 1, Mr. Gilbert, just as a matter of information, why did you start with 1923? Is there any significance to that year?

A. Yes, I would say the significance was that the data which we have at the Port Authority goes back to 1923, so as a result we went back to whatever we had.

Q. That is the first year you have, that is the reason for that?

A. That is correct.

Q. Now, the trend line shown on exhibit J. G. 1 is down. If traffic keeps on like it has in the last 10 years, would that line finally get down to zero?

A. If the trend were to continue, the answer statistically to that is yes. But obviously, if you know the derivation of the data, it would take an infinite number of years to arrive at that period of time.

Q. But finally, you would—

A. In the year one trillion, yes.

Q. Now, on sheet 3, in discussing your decline, you state that the greatest part of the decline occurred in the period following World War I.

[fol. 243] A. One or two.

Q. World War II, I guess.

World War II.

Looking at your exhibit J. G. 2 page 2, where you say the greatest decline occurred after World War II, New York's tonnage in 1946, which was the first post-war year, was 25,696,000 tons, is that right?

A. That is correct.

Q. And in 1956 it had increased from 25,696,000 to 36,246,000—quite a substantial increase in the volume of tonnage, is that right?

A. Mr. Gilman explained before that all that increase and then some is accounted for by one commodity and that is petroleum.

Q. If you eliminated all commodities, you would not have any tonnage, would you?

A. I certainly agree with you.

Q. Now, on your exhibit J. G. 6, showing the export tonnage through Hampton Roads, in 1956 you show a total tonnage of 39.5 million tons.

Do you see that figure?

A. Yes.

Q. How much of that is coal?

A. I do not know. I would have to check it.

Q. About 95 per cent of that is coal, is it not?

[fol. 244] A. I would say a large share.

Q. Well, 95 per cent, would you agree that is about correct?

Do you think that is correct?

A. I could check it if you wish.

Q. How long would it take you to check it?

A. I do not have the data with me. I would say it was about 90 per cent or thereabouts.

Q. Now, your exhibit J. G. 11, I do not know whether I understand that exhibit or not.

Under 1956 you show New York import—let's take J. G. 11, your export; page 1.

In 1956 as I understand it, your export tonnage through New York was 6,397,000 tons, is that what that shows?

A. Yes, sir.

Q. Now, do I understand that the export tonnage during the year 1956 through all other North Atlantic Ports from Halifax to Norfolk was only 4 million tons?

A. We are getting back to definitions.

These are a group of commodities and for those commodities, the figure is correct.

If we include your coal, this thing would become microscopic.

Q. Is coal in this case?

A. If we do not have this or any other, we would have no [fol. 245] commodities.

This is why definitions are so important.

Q. Well, as far as your exhibit shows, that you have put in this case, general cargo traffic moving through New York in 1956 was greater than the general cargo traffic moving through all the other North Atlantic Ports put together, is that correct?

A. Of the commodities that we listed, yes.

Q. Don't you think they are important, the commodities that you listed?

A. I think any commodity that moves by rail is important.

Q. Have you any complaint with this disposition of the traffic, 6,397,000 to New York and 4 million to all the other North Atlantic Ports put together?

A. Sir, I have worked on the data and when I watched the amount of traffic that the railroads are handling at the Port of New York, I am concerned.

Q. Do you think you are entitled to more than that?

A. Sir, the Port of Baltimore handles 4,900,000 tons—
Q. I am not talking about the Port of Baltimore.

Mr. Moerman: Let him answer—
Mr. Walker: He is not answering—
Mr. Moerman: Mr. Examiner, let the witness answer; I beg of you.
Mr. Walker: I do not want him to answer. I do not want [fol. 246] him to talk about Baltimore when I ask the question of him.
Exam. Boat: Well, that is involved in the answer, I believe.
Mr. Walker: Read the question to him, please, Mr. Reporter.

(The record was read.)

The Witness: May I answer, Mr. Examiner.
Mr. Walker: Certainly, I want you to answer.
The Witness: Proceeding on the point that I made before, I think that the 9 roads serving the Port of New York who only must divide among them on the average, 300,000 tons, have a case when only three roads at the Port of Baltimore share among them close to 5 million tons.

By Mr. Walker:

Q. You are looking after the interest of the railroads now?
A. There is a case of—this is a railroad case.
Q. Don't you think this is a port case?
A. A port needs a successful and prosperous railroad, it needs successful and prosperous railroads. This I am deeply concerned about.
Q. Let us look at your imports now, on page 2 of exhibit J. G. 11.
Do I understand that during the year 1956 New York received 6,494,649 tons of general cargo traffic?
A. That is correct.
[fol. 247] Q. And all the other North Atlantic Ports put together, from Canada to Norfolk received only 4,918,000 tons?

A. Of the particular commodities included under that definition, the answer is yes.

Q. Do you think this—do you think that New York is getting less than its proper share of that traffic?

A. Its share of the traffic moving from the CFA territory or of the total traffic moving in waterborne trade is definitely too small.

Q. Why do you think New York is entitled to more general cargo traffic than all the other ports put together?

A. I am not speaking about general cargo. I was speaking—

Q. Your exhibit shows it. That is what your exhibit is talking about, speaking about. Now, give me a reason why you think New York is entitled to over a million tons, more than all the other North Atlantic ports put together. You say it is unfair to New York?

A. In terms of the commodity disposition there, I have nothing to say about it, the record speaks for itself, of those commodities.

Q. That satisfies me.

Do you know how much traffic moved from differential territory to—strike that question.

Do you know how much more traffic moved from differential territory, to and from differential territory through [fol. 248] New York than through Hampton Roads?

A. I have here the records for New York and Baltimore. I think I could work up the other.

Q. Taking my word for it, if New York is receiving twice as much traffic, all traffic now, as Hampton Roads, to and from differential territory, do you think that is an unfair share of the traffic for New York?

A. I think the only issue involved is the right for all ports to compete without any artificial advantages.

Q. I thought you were complaining about the share of your traffic.

A. And our ability to compete, because of the disadvantage.

Q. Do you think that twice as much traffic through New York as Hampton Roads is unfair to New York?

A. If you take Baltimore, Philadelphia, Norfolk or just

Baltimore alone, which is the one I took, I would say yes, with no equivocation.

Q. Is your complaint against Baltimore and not Hampton Roads?

A. Our complaint is against a rate which prevents the ports from competing because of this artificial advantage.

Q. Well, do you think rates should be the same regardless of the service performed?

A. What do you mean by service?

Q. Transportation service.

[fol. 249] A. I think the rate should be the same from the point of origin to the point of destination, which is the—

Q. Do you think distance should have anything to do with the volume of the rate?

A. At this point you are getting beyond my field. I am only an economist.

Mr. Walker: That is all.

One other question.

By Mr. Walker:

Q. One other thing I want to call your attention to. I think it is an error.

A. That could well be.

Q. That is on exhibit J-G. 4 on page 5, you are talking about Philadelphia's share of the traffic. You show that in 1923, the Port of Philadelphia handled 10 per cent of U.S. ocean-borne foreign trade and that in the year 1956 this percentage had risen to 24.7.

Is that taken from the figures on J. G. 4, this statement?

A. Yes, in all cases the data is the—the data on the back sheet substantiates the chart. That is the composition of the exhibit.

Q. I think, if you refer to J. G. 4, I think you will find that all those figures that you state there are probably wrong.

A. That could well be. I will check and notify you. But [fol. 250] to the best of my opinion they are correct.

Mr. Moerman: Mr. Walker is right.

I think that correction should be made.

A. That data is correct, by the way.

Mr. Walker: You say your statement is correct or incorrect?

The Witness: Yes, the numbers are accurate.

Mr. Walker: I call attention to it. I do not think they are in accordance with the exhibit.

The Witness: If I may say off the record.

Exam. Boat: Off the record.

(Discussion was off the record.)

Exam. Boat: On the record.

Are we to understand that you testified that the figures on J. G. 11 include only tonnage to and from the affected territory?

The Witness: That is correct.

Exam. Boat: That is the same as Central Territory?

The Witness: That is correct, I refer to CFA.

Mr. Macleay: J. G. 11.

The Witness: I think it is 13.

Exam. Boat: J. G. 11 is what I was speaking of.

The Witness: No, I take that back, that is statistics at the port, regardless of how it moved to the port area.

Exam. Boat: Thank you.

[fol. 251] Does that complete the cross-examination?

(No response.)

Any redirect?

Mr. Moerman: One or two.

Redirect examination.

By Mr. Moerman:

Q. Mr. Gilbert, looking at your J. G. 2, the year 1956, with respect to which you testified that of a total export and import traffic of some 36 million tons, 17.5 million tons were petroleum products?

A. I believe the figure is 12 million.

Q. 12 million?

A. To the best of my recollection.

If you wish, I could check it.

Q. Is that import or export?

A. That is only inbound.

Q. Can you check that figure from your papers there?

A. Surely.

I wish to retract the statement, according to the data I have on hand, the import tanker cargo in 1956 was 19,099,000 long tons.

Exam. Boat: That is included in the figure for 1956?

The Witness: That is in the total, yes.

Exam. Boat: —shown on page 2?

The Witness: Yes.

By Mr. Moerman:

Q. You subtract 19,099,000—

[fol. 252] A. Yes.

Mr. Walker: Is that figure in any of your exhibits?

The Witness: That number is included in the total, sir.

By Mr. Moerman:

Q. Mr. Walker, sir, wanted to know if the breakdown of 19 million was shown anywhere in the exhibits which you have filed here.

A. I do not believe so.

Q. What is the source for the 19-million figure on petroleum products?

A. The source is the United States Department of Commerce.

Q. Can you identify it any further?

A. Yes, it is U.S. Department of Commerce, Bureau of Census, the Department of Shipping Statistics.

Q. All right.

Now, bearing that figure in mind—pardon me.

With respect to these petroleum products—that is what you call them, is it not?

A. Yes.

Q. —do you know what they are?

A. On the inbound side it is only petroleum.

Q. What kind of petroleum, is it crude, refined, or what?

A. We have made at the Port of New York a study of the type of petroleum which is imported. The overwhelming percentage at the Port of New York is referred to as

residual oils which is used for heating purposes in contrast [fol. 253] with further refining into gasoline.

It comes in, usually it is in a state used for industrial purposes.

Q. Look at your exhibit J.G-10, the year 1956, last line, under tanker cargo, is that the figure you gave us, 19,099,000?

A. Yes, that bears it out. That is the same number, same source.

Q. Now, do you know to what extent if at all, any of that tanker cargo moved inland by rail from the Port of New York?

A. It was microscopic. We used the I.C.C. waybill statistics just to get a feel of how much petroleum moved by rail to these areas which are included in the CFA territory.

I do not recall the number offhand. I could check it. It was very, very minor.

Q. Turn to your J. G.-6. That is your Hampton Roads showing. For 1956 you show 44 million tons of which Mr. Walker insists 95 per cent is coal—I beg your pardon. 95 per cent of the export, 39 million tons, is coal.

Now, do you know whether any of that coal originated at Hampton Roads?

A. According to our studies, based on the ICC waybill statistics, it appeared that practically all of it came by rail from some point beyond.

Q. It had a rail movement?

[fol. 254] A. Definitely.

Q. As contrasted with what you say is a microscopic railroad movement on the petroleum, some 19,000,000 tons?

A. Yes, sir.

Mr. Moerman: That is all.

Mr. Langdon: Before the witness is excused, I am wondering if I could call his attention to what appears to be an error on JG-2, page 2.

The Witness: Surely.

Mr. Langdon: In column 4, 1945. He shows a total of 23,388. Should not that be 28,000? 1945, column 4?

The Witness: I agree, Mr. Examiner, do you want me to take the time to verify it now. I know if you add it—check the basic source data which I have in front of me.

Exam. Boat: Yes.

By Mr. Langdon:

Q. That will change your percents, too, will it not?

A. That is why I want to pin down the source of the mistake.

Exam. Boat: If you will vertify the export and import figures, why, we will make the necessary computations.

The Witness: All right.

The tonnages are correct.

Exam. Boat: The basic figures are correct?

[fol. 255] A. Yes.

I would then have to verify against the universe whether the percentage is correct. I can not speak on that.

Exam. Boat: The other figure would be 23,088—

The Witness: Yes, the basic figures are correct.

Exam. Boat: The percentage can be computed.

The Witness: Yes.

That would have to be computed against the Universe.

Exam. Boat: Any further questions?

(No response.)

OFFER IN EVIDENCE

Exam. Boat: Do you tender the exhibit, Mr. Moerman?

Mr. Moerman: Yes, at this time I offer the testimony and exhibits of Witness Gilbert in evidence.

Exam. Boat: They will be received as exhibit No. 16.

(Exhibit 16, Witness Gilbert was received in evidence.)

Mr. Moerman: I call Mr. Edward K. Laux.

Thereupon EDWARD K. LAUX was sworn and testified as follows:

Mr. Moerman: Mr. Examiner, I should like to offer for identification the verified statement of Mr. Edward K. Laux, traffic manager, Port of New York Authority. His statement consists of 64 pages and is accompanied by not less than 20 exhibits.

[fol. 256] Exam. Boat: Off the record.

(Discussion was off the record.)

Exam. Boat: The documentary matter will be considered a part of this exhibit which will be No. 17.

(Exhibit No. 17, Witness Laux in support of Respondents was marked for identification.)

Direct examination.

By Mr. Moerman:

Q. Before I turn you over for cross-examination, there was some query earlier in the day about direct bookings. Are you prepared or can you help us a little bit on definition of that term?

A. As I understand the term, it means that the customer or buyer arranged for the booking with a Steamship Line before the freight was moved from origin to the port.

Q. Which contrasts with what other situation?

A. Well, ordinarily an exporter moves his freight to the port, North Atlantic Port, South Atlantic or Gulfport, and there it is handled or controlled by a foreign freight forwarder, and the foreign freight forwarder ordinarily makes the booking with the steamship line.

Q. And in direct booking he makes—the shipper makes it what?

A. The consignee in Europe or the foreign port makes it, he makes the arrangement with the steamship line.

[fol. 257] Q. I see.

Is that clear as far as it goes, Mr. Examiner?

Exam. Boat: I think that clears it up.

Mr. Moerman: All right, sir.

I tender the witness for cross examination.

Cross examination.

By Mr. Langdon:

Q. Mr. Laux, at the top of page 4 of your statement you say that with regard to the equalization of through ocean-rail rates prior to 1935 you will show later in your evidence examples.

Do you mind pointing to that part of your testimony where those examples are shown?

A. Well, for one place, we mentioned woodpulp, imported woodpulp and the other place where we made reference to it was in the exhibits which were reproductions of an engineer's report covering the Port of Boston, I believe, my exhibit H.

In this report, which is an excerpt from the Port of Boston, Massachusetts Port series No. 2, prepared by the Corps of Engineers for Rivers and Waters, War Department, reference is made to these differences in the ocean-rates.

And I believe the report also contains some calculations of the railroad rates and the steamship rates as of that time, that is before World War I.

I presume that is the period they were referring to.

Q. What page do you refer to on that exhibit?

[fol. 258] A. Well, I just picked up this one page, it is No. 112. It is about the third from the last page in the exhibit. It shows a table there, the United Kingdom via Boston, New York, Philadelphia, Baltimore, etc., examples from Chicago on agricultural implements, clothing, grain, meats, shoes, and so forth.

Q. Now, that situation began to be changed, did it not, right after World War I?

A. Yes, as I remember the history of it—of course right after World War I, I was not too much involved in this business, I was just a youngster having a lot of fun.

But as I read the history, these conferences commenced to form following the Shipping Act of 1916.

I presume you are familiar with that Act. That Act is the first legislation that this country had under which ocean rates were controlled or regulated. And in that Act was a proviso that the steamship lines may form conferences and gradually the steamship lines formed those conferences.

One group covered the United Kingdom; another one, the Continent, another one South America and so on, and little by little the rates became stable and they were on the same equality for all ports.

In 1935 it was further accomplished when the carriers that handled grain and so on, kind of got together and

agreed that they observe one rate from the North Atlantic Ports.

[fol. 259] Q. Would you say that the more important rates were equalized soon after World War I and that the rates that were equalized later were the less important ones, or how would you divide the progress made between World War I and 1935?

A. Well, from the railroads' standpoint, the ones that were equalized did not mean too much to the railroads' volume, and of course the volume was on export grains and packinghouse products, commodities of that nature, which moved from far inland distant points.

The so-called equalized rates which covered this term which has been referred to as general cargo and I might say to clarify the record general cargo is a term they use in the steamship trade, and they list all the commodities in the tariff and they say, instead of saying NOIBN, like we do in the railroad business, they say general cargo, and there is a flat rate.

As to those commodities, they did not move in such great volume from the interior.

Q. But what there was of those commodities, that was moving through New York, wasn't it, principally?

A. Oh, I do not think so. We have had other ports, New Orleans was a big port, Boston was a big port, Philadelphia has always been a big port.

Heavens, Baltimore is a wonderful port.

Q. Now, that equalization that you say took place— [fol. 260] rather, terminated in 1935, marks, as I think you testified, the beginning of New York's disadvantage, using your words?

A. I believe that is about it. We commenced to worry about the differential, the railroads did, I mean. Not me. I was not around in 1935.

Q. You say at page 51 in your testimony that you have been insisting upon equal rates, equal rail rates since 1935, the Port of New York Authority, that is right. But as far as me, personally, I have only been with the Port Authority since 1944 and I can promise you I did insist upon getting this adjustment.

Q. Was that insistence very real as to you?

A. Well, I do not know what you mean by real?

Q. Determined.

A. You mean did we make it stick or something?

Q. Yes.

A. No, we were really gentlemen, we talked quite nice about it, we had lunch together and outlined the problems and I think the railroads realized that it was time to move ahead.

Q. Why did you not file a complaint?

A. I do not know.

Q. You do not know why you did not file a complaint?

A. No, well, I think one reason is that we thought it was the problem of the railroads, not the Port Authority.

Q. Port Authority has got no business with this case, you mean?

[fol. 261] A. Well, I do not believe we have the right to tell the railroads what they must do. We try to cooperate with them. We know they are important in our port. But we believe, if a railroad is in trouble—well, you ought to know about it—meeting truck competition, you meet it every day, if they cut the rates in half, say, well, we have a competitive situation here and I think it is time for the railroads to move ahead and help themselves in preventing further loss of traffic.

Q. So, you have been insisting since 1935 that the railroads act in their own self-interest, right?

A. Yes, we have been insisting in a manner where we showed the different movements that have been diverted and where shippers have informed our people that the reason they were diverted was on account of the differential.

Q. You say at page 46, Mr. Laux, that these rates should have been filed 10 years ago.

A. Right, 10 years ago, that would be what, about 1948-something, right after World War II.

Q. Right after World War II they should have filed these rates in your opinion?

A. Yes, sir.

Q. Have you been selling them on this idea, have you been telling them that all these years?

A. No.

Q. Did you assume that they would reach that conclu-
[fol. 262] sion, themselves?

A. Yes, I had a lot of confidence in the New York Railroads. Of course, they have had their problems and everybody knows they have had their problems in trying to get enough revenue to live on.

They have been called into all these ex parte cases and whatnot and they have kept them pretty well occupied.

Of course, this Port business was a fringe deal in a way, they had so many other things to worry about.

So, whenever we could, we brought it to their attention.

Q. From the port point of view, it does not make any difference, does it, whether this traffic comes to you or leaves you by truck or by rail?

A. From the standpoint of port facilities, steamship piers, things like that, it does not. But let me tell you that the railroads have an important stake in our port.

We have a lot of railroads, we have got good ones, which we want to keep there, healthy, we can't fold them up, their facilities are there. They have to make money with them.

In order to make money, they would have to have a greater volume of business.

If they had a greater volume of tonnage, I am sure their costs that Mr. Bongartz referred to or is incorrectly
[fol. 263] referring to, would be greatly alleviated.

Mr. Bongartz: I ask that be stricken as clearly incompetent.

Mr. Moerman: No objection.

Mr. Langdon: If it stays in the record, I would like to ask some questions. Is it then stricken or not?

Exam. Boat: I do not think it should be stricken.

Mr. Bongartz: The witness has shown no qualifications whatever.

Mr. Langdon: I understood you to say it was stricken.

Exam. Boat: No.

Mr. Langdon: It is not stricken.

By Mr. Langdon:

Q. I take it then that you believe that if traffic at New York is handled at less than cost, the more traffic you handle the greater the loss or do you turn a loss into a profit?

Mr. Moerman: I agree with Mr. Bongartz, I do not think the witness should get into this subject, because he did not testify about it.

Mr. Bongartz: Then I renew my motion and I take it you join.

Mr. Moerman: Yes, I do.

We have other witnesses on costs.

Exam. Boat: Let us develop it through someone who is competent to go into that if necessary.

[fol. 264] Mr. Bongartz: Do I get a ruling now?

Exam. Boat: It will be considered stricken, yes.

Mr. Moerman: Philadelphia and New York agree against Baltimore.

By Mr. Langdon:

Q. So that, since 1935 the Port Authority has been insisting upon equal rates and you say that these tariffs should have been filed 10 years ago, right?

A. That is substantially correct, yes, sir.

Q. You refer at pages 7 and 8 of your testimony, Mr. Laux, to the fact that the bulk ocean carriers tend to assess, and I emphasize "tend" because that is your word —and then a penalty against New York Authority handling of bulk traffic at New York. You also say that those bulk carriers, as I read your testimony "incline toward assessment of a penalty charge against New York," is that correct?

A. That is correct.

Q. Now, when you say "tend to assess," what do you mean?

A. I mean to say if we were endeavoring or someone was endeavoring to bring a cargo of dry bulk commodities to New York, for example, ore, if the boat lines were asked to quote on a cargo of dry bulk commodities, the tendency

would be that they would require a higher charge to New York than they would to Baltimore or the other ports to the South of New York.

Q. Does that mean that ocean rates on bulk traffic are [fol. 265] not equalized?

A. Well, I cannot say whether it does or does not, because we have handled very little dry bulk.

You see, if we had the proper railroad rates for dry bulk, then we could probably talk about it more realistically. But as I make my investigation with these carriers that are interested in dry bulk, they all say, well, if you have a return cargo we have to ship out of New York as against Baltimore or somewhere else to get some coal or grain which we do not have.

Q. So in the event of a traffic shift at some of these out-ports, you would anticipate that these bulk ocean carriers would tend to treat those out ports in the same way that you say they treat New York, is that right?

A. No, I think if we had equalized rates for the railroads, why we would not have any problems.

These boat lines could come into New York, Baltimore, all at the same rate.

Q. You would get our bulk traffic from us, is that right?

A. No, we are going to get new traffic. Don't you know it is going up? Don't you look at the papers? Certainly new traffic, millions of tons of it.

Q. Where is that going to come from?

A. I do not know. All over the world. It has been ascending right along, has it not?

[fol. 266] Q. Is the object of these equalized rates that you want, to put you in a position to handle new traffic?

A. In a position to handle new traffic and to prevent the downward trend of our traffic, in other words, to stop the tonnage from going down, down, down, as Mr. Gilbert tried to show you.

Q. You are satisfied with your present share, but you want to stop further erosion?

A. We want to stop further erosion and then see what we could do about improving our present share.

Q. By diverting bulk traffic that is moving through Baltimore and the other outports, right?

A. No, I do not say by diverting it.

Q. Where is it going to come from?

A. I said more imported tonnage. The iron ore, for example, that has gone way up since the fight started on the iron ore rates.

Philadelphia has got a lot of iron ore and Baltimore really did not lose it.

Q. Are you satisfied to let Baltimore and Philadelphia maintain their present shares of the bulk traffic?

A. Of course. We are neighborly with you fellows. We do not want to take everything away from you.

Exam. Boat: Shall we recess for 10 minutes at this time?

[fol. 267] (A brief recess was taken.)

Exam. Boat: Come to order, please, gentlemen. We shall resume now.

By Mr. Langdon:

Q. Mr. Laux, at page 10 or 11 you refer to your experience as an industrial traffic manager, and apparently you employ that experience as the basis for your statement that industrial traffic manager would not be doing an efficient job by using a higher cost transportation service when a lower cost service was available.

Do you mean when you use the phrase "Lower-cost service" a measure that is limited to dollars and cents?

A. No, sir, I had in mind only one thing, the railroads' rate, or perhaps in any other—a freight rate. I mean using some other mode of transportation, perhaps barge or coastwise line.

Q. You did not intend by that statement, then, to connect up the rail service with the ocean service?

A. No, sir.

Q. Wouldn't that be the criterion that an industrial traffic manager, interested in export or import freight, would use?

A. Hardly.

Q. He would only look at the rail rate?

A. Yes, sir.

Q. Is it your theory or understanding, rather, that service on the or at New York and all these out ports is com- [fol. 268] parable?

A. I would say so, it is reasonably comparable; ordinarily for your information, on export traffic these firms generally have an export manager who makes the deals on how they will sell or what kind of a deal, if any, they will make—the shipper.

The traffic manager, his duty is to find the lowest railroad rate or truck rate or steamship rate to get the freight to port.

Q. Is it your understanding now, and I want the record clear on this, that the ocean service provided at New York is not any better or any worse than the service provided at the out-ports?

A. Well, if you are talking about out-ports, I do not know what you mean by out-ports.

Of course, there is a difference in steamship services from the various ports, but naturally they have to look to the port that is competitive, and I would say, using Baltimore as an example, or New Orleans, that the service there is just about as good as it is from New York.

Q. Is that what you tell the public through your advertisements and articles via the Port of New York?

A. We have to tell the public how good our service is to match what you tell the public about Baltimore.

Q. Isn't it true, Mr. Laux, that from the point of view of frequency of service, directness of the service, that there [fol. 269] is no comparison between New York and Baltimore?

A. Definitely not. I looked into that, and I was really startled to find the way the service from Baltimore has improved, it jumps in leaps and bounds from one month to the other.

They pick up three or four more sailings, some more direct sailings, they are doing a pretty good job at Baltimore.

Q. Is your testimony based on advertised service or actual service?

A. Well, the only thing we have to go by is advertised service, but we were compelled to look over the official

figures in view of Mr. Hammel's elaboration in his exhibits and that kind of—that made an awakening in our shop.

Q. You indicated that there were some differences between scheduled service and actual service.

A. Well, it showed Mr. Hammel left out about 800 vessel sailings.

Q. What were they?

A. Dry bulk carriers.

Q. Dry bulk carriers?

A. And also general cargo carriers.

Q. Sailing from where?

A. Sailing to and from the Port of Baltimore.

Q. During what period of time?

[fol. 270] A. The same period of time Mr. Hammel chose to select. I think it was a six-month period.

Q. Are you going to put the criticism of that exhibit in the record?

A. I do not know.

Q. Now, you refer, as among the 18 reasons why the Commission is justified in lowering rates to the Gulf, to the then existence of differential lake-rate and barge rates at New York. I think that was reason No. 16 and it is on page 31.

A. May I repeat 16—see if we got the right one: The differential rates under the all-rail-rates available between New York and interior points via lake and rail routes and the New York barge canal: That was one of the reasons submitted, as I recall it, by the carriers in this docket case 3718.

Q. Now, in relation to your comment, I would like to ask this question: You say, since World War II all of the rail and lake and barge services to and from the Mid-Continent area have been suspended. My question goes as to the suspension of the barge services. Is there no longer available barge service from New York to the Mid-Continent area?

A. That is correct. It is no longer available as it was in the pre-World War II days.

There are barges that are operating on the canal today but they are industrial carrier barges. They move per-

[fol. 271] haps cement and petroleum products, industrial products. But they are not common carriers, as such.

We have one or two that become involved maybe on some special commodity movement, but as a general proposition, the barge competition has deteriorated so much that the New York Railroads do not even bother meeting their competition.

Years ago they used to reduce their rates in the summertime. Today they ignore them entirely, do not bother with them at all.

Q. How much is the import and export tonnage, or aggregate tonnage if you have not got the breakdown between export and import traffic, moved over the barge canal last year?

A. I do not know. I know it is a pretty substantial tonnage. But it is not the type of tonnage that would be involved in this CFA case.

Q. Are you sure of that?

A. Pretty positive. You may be referring to some isolated movement of maybe newsprint and perhaps an isolated movement of grain.

We do know of one or two special movements like that, but it really does not mean anything because it is sort of a deal that somebody made, you know, "we carry the paper one way and I will bring the grain back," and if you wanted to ship over that line you probably could not get space on [fol. 272] the barge.

Q. Now, your reason 18, you say—you quote the Commission or paraphrase the Commission: "densely populated and highly industrialized territory immediately adjacent to New York which affords a market for a large volume of import traffic and produces great quantities of high-class export traffic."

Again I am interested in your comment, you say that this finding by the Commission has nothing to do with the issue in this case. That is the sixth line down in your comment.

Mr. Moerman: I would like to interject at this moment to say that I do not believe the witness says they are findings of the Commission.

I believe that these are a summary of contentions made by the Southern ports. If you look back on page 26, I think the witness states it correctly, Mr. Langdon.

Mr. Langdon: Whatever they are, I am interested in Mr. Laux' comment.

Mr. Moerman: All right.

Mr. Langdon: —that the fact that New York is a densely populated highly industrialized area, and produces a large amount of high class export freight and is producing great quantities of high class export freight has nothing whatever to do with the issue in this case, is that correct?

A. That is correct.

[fol. 273] By Mr. Langdon:

Q. On what theory, then, are the aggregate tonnage figures at New York and its competing ports relevant to the issue in this case?

A. Well, I presume you mean those over-all figures that ran into millions of tons. I think they were shown mainly to let the Examiner see the trends over a period of—1923 to 1956—how many years is that? 30-some odd years, that the over-all tonnage for the nation is going up and the tonnage from New York is going down.

Q. According to your testimony here, as I understand it, they would have nothing to do with the issue in this case?

A. That is correct, because this is a railroad case and we are talking about these CFA territories, far removed from New York proper.

By the way I would like to make a change in my statement at this time, Mr. Examiner. If you will refer to page 15 the third line from the bottom, I enumerate the Baltimore Steam Packet, that Baltimore Steam Packet should be deleted because I understand they are still operating between Baltimore and Hampton Roads port.

Exam. Boat: That is right.

The Witness: Thank you, sir.

Exam. Boat: That correction will be made.

The Witness: Thank you, sir.

By Mr. Langdon:

Q. Now, turn over to page 59, Mr. Laux, in the middle [fol. 274] of the page I gather it is the purpose of your testimony to discredit as a test of the rate relationship here involved the element of distance, right?

A. Yes, sir.

Q. You do not want the distance to play any part in relating the rates here involved, is that correct?

A. Well, I would like to answer it this way.

I honestly do not believe you can use distance as an element in making rates that ought to be competitive, or are to be competitive with other carriers or other ports.

Q. Now, is it not true, Mr. Laux, that distance is ordinarily used as a yardstick of the service that is performed, a rough yardstick of the service that is performed?

A. Well, it is true, it started, I believe with Commissioner Eastman. He was the great Commissioner and he believed we had to have some sort of a yardstick and he used mileage.

But, on the other hand, it has been shown time and time again, that where there is competition, even within a rate group or to a port, for example, we will use Baltimore, the B & O may have a short route to and from Baltimore from certain points, but there are many other routes that are traveled regularly into Baltimore and still the Baltimore and Ohio cannot maintain the lowest rate, it has to let the other carrier meet that rate despite the fact that its distance may be 30, 40, 50 per cent greater than the [fol. 275] Baltimore and Ohio route.

Q. Is it your point, then, that distance is an inaccurate indication of service rendered?

A. As far as import-export rates are concerned, I would say yes.

Q. What is a better transportation standard than distance?

A. Well, I believe the standard that should be used is the standard under which traffic will be generated. To have a rate that looks nice on paper does not produce revenue. You have to have a rate that moves traffic.

Q. Mr. Laux, in this case, though, we are relating rates, are we not?

A. Well, in this case the railroads are trying to have an opportunity to equalize the lowest rate to and from the lowest rated port.

Q. But, basically, the issue is one of relationship, is it not?

A. Well, I do not know whether or not that is the right term or not. I dislike to make any comment on relationship because it is tossed around so many different ways. It may be used to make a rate higher or make a rate lower.

Q. Do you think that in the decision of this case, that—strike that.

What transportation standard would you apply in determining the competitive rates involved in this case? You [fol. 276] have discredited, I understand, distance as a transportation standard.

Now, what other standard would you use?

A. You mean in determining the case?

Q. Yes.

A. I think it is a very simple thing. If you call a standard, I do not know whether standard is the proper word or not, but it is simply to let the railroads to and from New York and Boston meet the Baltimore rate.

Q. Actually, is that in your mind a transportation standard?

A. I am not sure I understand what you mean by a transportation standard.

Q. I will ask you, then, you are a rate man, an experienced rate man. What do you regard as constituting transportation standards for the making of rates?

A. Well, I think a transportation standard—of course I am not an expert on that—but I would say the standard I would go by is the one that brings revenue to my railroad.

Q. Well, would that be a cost standard?

A. No, it would be the standard under which I make money. I do not know whether costs are involved there or not.

Q. In order to make money or determine whether you

are making money, you would have to know what your cost of service was, would you not?

A. I presume cost has a place in the consideration of [fol. 277] whether or not you are making money. You would have to find out what costs are and deduct it from the gross and see whether anything is left.

Q. You do not want these railroads, for whom you take such a paternalistic attitude, to put in some rates under which they are going to lose money, do you?

A. They are not going to lose money. Who said they are going to lose money?

Q. We are saying it.

A. I did not say it and the respondents did not say it.

Q. We have not seen one bit of evidence from your side of the case that these rates that you are urging the railroads to put in are going to make money for them.

Mr. Moerman: I ask that be stricken from the record as an observation, not a question—and it is immaterial.

Exam. Boat: It does not relate to his direct.

By Mr. Langdon:

Q. Have you ever heard of the value of the service as a transportation standard?

A. Not in export-import rate fabrics. I have heard of that in domestic rates but not on import or export.

Q. You regard that as immaterial, do you?

A. Yes, absolutely.

Q. It has to do with making of rates for export-import?

A. In making rates?

[fol. 278] Q. Yes.

A. I do not know that rates on export or import are ever made.

Q. What are they, dictated?

A. No, they just come about through circumstances. Some of these rates date back, I will bet, 50 years.

Q. Mr. Laux, are you familiar in your capacity as traffic manager with the truck rates that apply on export-import traffic at New York?

A. Well, there are not any export-import truck rates as far as I can determine. The motor carriers; several groups

of them as you probably know, operating from and to the East, Central Territory and Middle Atlantic States, and I think generally they observe the railroad rates with a certain premium added when it comes to small shipments.

Now, I have not seen any general line of truck rates that are designed to meet the import-export rate of the railroads.

Q. Have you examined the truck rates to and from the ports with which New York competes?

A. In a general way I have.

Q. Is it your observation that the truck rates to and from New York are measurably higher than they are to the other ports?

A. In some cases that is so. Of course—bear this in [fol. 279] mind, when you say have you observed the rates, I have looked at the rates. But I did not take a rate on a specific commodity and measure how much of that commodity the truck was carrying and then compare it with the railroad rate.

I did not do that. So I am really talking in a vacuum when I answer your question because—

Q. Well, I am asking you this question: Are the truck rates from any point in differential territory applying on export or import traffic to New York higher than they are to Baltimore?

A. Yes, they are.

Q. It is a measurable difference, is it?

A. I could not say whether it is measurable or not. I do not know what you mean by measurable. There is a difference, and the rates are higher.

Q. Now, Mr. Laux, during what period since the war has this 3-cent differential adjustment which you are complaining about been in effect? During what period since 1946?

A. First of all we are not complaining. We are just trying to support our railroads.

But the differential you will notice—

Q. Let me revise it: With which you are dissatisfied, is that better?

A. Maybe that would be better.

Q. Because you are not satisfied, are you?

[fol. 280] A. No, we are not satisfied, but we are not complaining in this case, but the rate fabrics—I do not know how much you know about them—you are a lawyer of course and there are plenty of traffic men, but the rate situation as far as the relationships go is just a mess ever since 1947, and still is.

Q. In fact, the differentials at New York had been generally in excess of 3 cents, have they not?

A. Yes, at different times.

Q. Have they—

A. Not only with Baltimore but with New Orleans and other ports, too. In other words, we were always on the outside. You see, we always had the highest rate and your railroads and the others serving the Southern ports took their sweet time in fixing the rates up, they just wanted to leave them that way.

Q. That difference has amounted to, in many cases, 5 cents, has it not?

A. And more sometimes.

Q. And more?

A. Yes.

Q. Have there been any periods of time since 1946 when you have had the 3 cent differential in effect?

A. Not that I can recall.

Q. So that all of the traffic distribution since the war that you referred to in this case has been effected under [fol. 281] a differential adjustment other than the one that is involved in this case, is that right?

A. I did not say that, no, sir.

Q. Isn't that true?

A. Well, it is not true, either. You asked me when I commenced to notice this thing. I told you it was when these differentials became disturbed.

But since that time or since World War II, we have definitely noticed that the trend of traffic was going more and more to the other ports. And when we talked to our shippers, invariably we were referred to the differential, 3 cents.

Q. Will you please answer the question? Let's go back and have the reporter read it, please.

(The question was read.)

The Witness: I said no.

By Mr. Langdon:

Q. Hasn't the traffic distribution since the war been accomplished under a differential that, so far as New York is concerned, was in excess of 3 cents? I think that was your testimony?

A. No, wait a minute; you mentioned distribution. What do you mean by distribution?

Q. Well, the participation of the competing ports in this differential territory traffic. All of the figures in other words, that you give for export-import traffic to and from [fol. 282] this differential territory since 1946 has been accomplished under a rate adjustment other than the one that is involved in this case.

A. Well, I can not say that is so because—maybe I spoke a little too fast—on grain, for example, the carrier did re-adjust the differential rates pretty promptly on grain and a few other commodities.

Q. What are the few other commodities?

A. I do not recall what they are at the moment.

Q. Is grain the only commodity?

A. No, there were a few others. And the reason the differentials were restored promptly was because it was a simple matter in amending the tariff. In other words, it was a special tariff.

Q. But for the great bulk of traffic, however, the differential at New York since the war has been greater than 3 cents, is that correct?

A. Well, the differential has been greater in a good many cases, but whether it covered the great bulk of the traffic; I could not say. When we talk bulk, we are talking about volume, naturally.

By Mr. Price:

Q. Mr. Laux, if the record in this case should show that the suspended rates through New York do not pay their out-of-pocket cost for performing the service, would you still urge the commission to approve them?

[fol. 283] Mr. Moerman: I would like to hear the question read, please.

Exam. Boat: Please read the question.

(Question read.)

Mr. Moerman: I do not think the witness can determine from this record whether or not the rates will show that they are compensatory or not. The Commission has that determination to make.

Mr. Price: It is a hypothetical question, Mr. Examiner. I would like to know what the witness' theory is on it. Does he want these rates put in, even though they are non-compensatory to the railroads?

Mr. Foley: I think it is irrelevant what he wants. The carriers have the burden here.

Mr. Price: Mr. Laux has put in an extensive statement justifying these rates. I would like to see what he has to say about that feature.

Exam. Boat: Well, whether he has a view on the matter or not—

The Witness: I would tell him that we would reach that decision—we would cross the bridge when we come to it. I do not see any sense in prognosticating—I do not have a crystal ball.

By Mr. Price:

Q. You have not given any consideration to these rates whether they are compensatory to the railroads or not?

[fol. 284] A. No, we have not, no.

Q. Very well. If, as you state, Mr. Laux, New York's disadvantage began in the year 1935, I believe that was your testimony, wasn't it?

A. Yes, sir.

Q. How do you account for the fact that its participation continued to improve even after that period up until World War II?

Mr. Moerman: Participation in what?

Mr. Price: The traffic we are referring to today.

Mr. Moerman: General over-all cargo, CFA traffic or both?

Mr. Price: Both, general over-all and CFA.

The Witness: No. 1, I do not know whether or not what you said is true because we did not have available to us any breakdown of the railroad figures.

By Mr. Price:

Q. Are you talking now about the CFA traffic?

A. We are talking about—you said this period after 1935, why so-and-so and so-and-so. Now, maybe if you make your questio e specific, I will try to give you a more specific answer.

Q. I refer you to an exhibit put in by other witnesses for the Port Authority, indicating New York's participation in the total ocean-borne traffic, the yea 1935 on.

[fol. 285] A. Well, I think the statistics you are referring to are the statistics covering ocean tonnage, right?

Q. Right.

A. Well, we do not know how much of that went to the interior. We do not know where it went.

Q. You agree those statistics do not have any particular relevance here, then?

A. Probably not, not as far as this case goes. In other words, like I said before, these figures were put in to show a trend. We are getting down to brass tacks now.

When we talk about railroad tonnage from CFA, we did not have that originally, and that is the best we could produce, which after all, is a statistical reproduction, and we could not tell whether the traffic went to Teaneck or Chicago or where it went.

Q. You refer at length to the woodpulp situation, I believe, stating that the rates on woodpulp to New York from Sweden and Finland are higher than to other ports?

A. Yes, sir.

Q. Does it follow that the ports south of New York would receive more of this woodpulp traffic than New York or perhaps Boston?

A. Well, I do not know how much these other ports have received of woodpulp. I know they certainly have received more than we get at New York.

[fol. 286] Q. Do you know what Boston's participation has been in the woodpulp traffic?

A. I do not.

Q. You state at pages 7 and 8 that lower port costs at ports south of New York compel the steamships to solicit their heavy bottom cargoes at those ports whenever possible: Do you recall that?

A. Yes, sir.

Q. Why in your opinion, don't these same steamships load the balance of their cargoes at these other ports and thereby save the traffic charge between ports.

A. Very simple: The top cargo in New York is the cargo generated around the metropolitan area of New York City, that is the cream of the cargo. They call it broken stowage, and there is plenty of that around New York, which is produced and manufactured by the industry within maybe a radius of 40 or 50 miles of New York.

Q. Do you have any opinion as to why the majority of the steamer sailings make New York the first port of call and the last port of call on their itineraries?

A. For the same reason, that they carry some very high valued commodities, small packages, maybe capsules some of it, and they want to get rid of that for the customers in New York, like R. H. Macy's, Gimbel's, Stern's, marble-ware, Jewelry, clothing, shoes, leather goods, ties. That is the [fol. 287] commodity that is given expedited service by the steamship lines, because the steamship lines are competing with one another for that traffic and it is local, by that I mean, it goes in the port area.

Q. You state at page 9 that the bulk vessels inbound assess a penalty charge against New York over ports south thereof due to their lack of export bulk traffic. Are not the bulk handling facilities at New York inferior to those at other North Atlantic ports?

A. Well, they are kind of old facilities, old-fashioned. I do not know whether they are not as good or not, but they are old-fashioned.

Q. It was brought out in the iron ore case that the ore unloading facilities at New York are antiquated and outdated. Has that situation changed?

A. Not a bit.

Q. Perhaps you could name for us, if you will, a few of the factors other than freight rate which influence the port that will be used by shippers or receivers?

A. I do not know of any.

Q. Rates are the only one in your opinion?

A. Yes, sir.

Of course, sometimes, frequently, we run around or across a foreign buyer in Europe that has perhaps some interest in a foreign flagship or ship line, and he will specify [fol. 288] the use of the port that the freight should be moved via, or where it is, the steamship line is operating to and from, but those are exceptions to the general rule.

Q. Didn't you go into a long list of considerations that the Commission referred to in a previous case as to why traffic moved through certain ports in preference to others?

A. Yes, we tried to show why those conditions have changed.

Q. But, nevertheless, conditions—strike that. I will let the record speak for itself on that.

A. All right.

Q. If the freight rate is the only consideration in determining the choice of a port, what do you tell shippers that you want to use the port of New York—why do you tell them they should use that port?

A. Why?

Q. Yes.

A. Well, I tell you, when we go around to see our shippers, we try to find out why they are not using our port. That is the information we try and develop. And why they use the other ports.

Q. That is not answering my question.

A. That is the only answer I can give you. I do not tell them anything else.

Q. You do not tell them anything else?

A. No.

[fol. 289] Q. Your exhibit 5-d Mr. Laux, I believe that it refers to relative ocean distances to and from various Atlantic ports. As I read your exhibit 27 or 65 per cent of the foreign ports shown there are nearer New York than South Atlantic or Gulf ports, and 28 or 68 per cent are closer to New York than to Philadelphia.

Assuming that to be so, would you not say that that gave New York some advantage over the other ports?

A. In what way? I do not understand what you mean.

Q. What is the purpose of the exhibit, first? What are you trying to show?

A. It is merely for the purpose of information. We thought the Interstate Commerce Commission would desire to see what the distances are between the ports and the foreign ports.

Q. You had no other purpose in preparing the exhibit?

A. No, no other purpose because we did not know whether anyone else would supply this data and we thought it might be significant in the interest of the proceeding. I did not even make an analysis to notice which distance was shorter or longer, because it does not mean anything today, because it—the steamship lines equalize their ocean rates, so what is the difference? And the other thing is: You have ships that operate today, we have a standard speed of maybe 18 to 20 knots, which we did not have back before World War I, or even after World War I.

[fol. 290] Q. You state at page 30 the fact that many steamship lines have their headquarters in New York is of no significance in connection with the availability of service. Is it not a fact that control of the bookings of the vessels is very often in the hands of the main offices in New York; that the other ports must clear their bookings through New York?

A. I do not think that means anything. Naturally, you have to have some home office, just like the railroads have a home office in Baltimore, another one in New York, another one in Chicago. Their managers at these other ports certainly have enough leeway to make bookings or engage traffic and then report what they engage or what they book, so that the New York office would understand how much more space was available.

Q. Is it not the common practice to clear bookings through the main office to find out whether or not there will be sufficient cargo space at that port?

A. Today they tell me they got all the space in the world. You do not even have to worry about a booking today.

Q. Getting back to your exhibit D-5, Mr. Laux, page 28 of your testimony, you comment on the fact that there are many important foreign ports to which the distances from Charleston and Savannah and New Orleans are much shorter than from New York.

[fol. 291] Is there any significance to that statement?

A. What did you say, page 28?

Q. Page 26, bottom.

A. Page 26. I am simply saying that—of course everybody cannot have the shortest distance—that while it may be different here, why it is different between somewhere else. And, after all, all of these ports are competing for this same traffic, to CFA. So, in one case the South Atlantic Port maybe has the shortest space, the shortest distance from one foreign country, and then again it may have the longest distance from some other foreign country.

In other words, you cannot tell where this freight is going to come from. It comes from all over the world; on that count distance does not mean much when you talk about railroad freight.

Q. Whatever decline you say has taken place in New York's relative participation, has that been due to the competition of South Atlantic and Gulfports more than the other North Atlantic Ports, or not?

A. I think it is a combination of all of them.

Q. Which do you think is getting most of what you consider New York's share?

A. I could not say. I do not know, but from some of the figures that Mr. Gilbert arranged, it is very obvious that these other ports are picking up.

[fol. 292] Q. Do you think the decentralization of industry has any bearing on the increased participation of South Atlantic and Gulfports?

A. On the import-export traffic I do not believe it has anything to do with it at all.

Mr. Price: Thank you.

The Witness: Yes.

By Mr. Walker:

Q. Mr. Laux, I understood you to say that all of these exhibits showing all of the traffic that moves throughout the ports has not much to do with this case, that the real meat in the coconut is the traffic to and from differential territory, rail traffic, right?

A. Yes.

Q. Have you any figures showing what the movement was through New York to and from differential territory, in a recent year?

A. Yes, the railroads had an exhibit, I think they submitted, showing 1955 and 1956.

Q. And have you seen the exhibits showing similar traffic moving through Hampton Roads?

A. No, and the reason I have not is because we were concentrating for the most part on matching up what Mr. Mollman put in this proceeding.

Q. Did I understand you to say generally speaking a shipper would ship through the port with the lowest rail rate?

[fol. 293] A. Yes, sir.

Q. How do you account for the fact that during this period 1955 and 1956 twice as much traffic moved to and from New York as to and from Hampton Roads, when Hampton Roads had a differential under New York?

A. The only thing I can say is that "Mister/Hampton Roads is not on his feet getting business.

Q. In other words, Hampton Roads has not hurt New York?

A. They should go out and do a job. I think it has hurt us in the fact that they hav a differential, that is a talking point.

Q. Do you know of any traffic that you have lost to Hampton Roads?

A. Yes, plenty of it, butter, dried eggs, I do not know how much more we are going to lose down there at Cheatham, Virginia where the army is making a deal.

Q. Do you mean to say that the Hampton Roads traffic has increased other than a little grain, over the past few years?

A. A little grain?
Q. Yes.
A. Yes,
A lot of grain.
Q. Grain?
A. A lot of grain, not a little grain.
[fol. 294] Q. Grain, I said?
A. A lot of grain, more than we have. Let me tell you that butter traffic which moves in 500-ton lots, dried milk which moves in 600-ton lots, that is the kind of traffic we would like our New York railroads to have a share in.
Q. Do you think you have any complaint against Hampton Roads when today you are handling twice as much traffic to and from CFA territory as they are?

Mr. Moerman: Whom do you mean by "you", the Port Authority or the witness here?
Mr. Walker: The Port Authority.
Mr. Moerman: I object to the question. It does not matter whether the Port Authority has any complaint or not.
Mr. Walker: You are here complaining.
Mr. Moerman: Yes, we are complaining in behalf of the Respondents.
Mr. Walker: I would like for the Examiner to rule on my question.
The Examiner: The objection is overruled.
Mr. Walker: Do you want the question read?
The Witness: Yes, I do not know what the question was.

(Question read.)

Mr. Moerman: Permit me to renew by objection. He says "you are handling twice as much traffic." That is vague.
[fol. 295] Mr. Walker: You are quibbling. I mean twice as much is moving through the Port of New York as moves through Hampton Roads—
Mr. Moerman: May I have a ruling on my quibble, sir?
Exam. Boat: I think he is aiming his question—at least it can be answered relatively, I think. The witness has an answer, I think, which is pertinent.
You must have in mind relationships of some sort.
The Witness: Well, of course, I do not know, Mr. Walker,

when you say twice as much, you are not referring to all railroad cargo or all-rail tonnage, are you?

By Mr. Walker:

Q. Yes, to and from differential territory.

A. Well, I do not think twice as much is a lot of tonnage for 8 or 9 railroads. You have about two railroads down there in Hampton Roads and we have about 8 or 9 in New York. Certainly those 8 or 9 ought to get something better than 2 times what you get.

Q. Do you think the tonnage ought to be divided by the number of railroads serving the port?

A. No, I did not say that but I mean—you are bringing out Hampton Roads with two rich railroads and we have poor railroads around New York.

Q. You were talking about butter there. Somebody handed me an exhibit here filed by Mr. Pease. It shows during the period June 1, 1956, through May 31, 1957, 1764 tons moved through Norfolk, none through Newport News [fol. 296] and 24,000 tons moved through New York.

A. Butter?

Q. Yes. It looks like you have done pretty well with your butter, haven't you?

A. Yes. Where did it originate? It must have originated in New York.

Q. Well, I will say that is a U.S.D.A. figure.

A. Yes, originated in New York, probably a warehouse in New York City.

Q. You are doing pretty well, are you not?

It says shipped by the Cincinnati and Chicago Office. I do not think that means anything—

A. Probably in a warehouse.

Q. Now, if we are going to make these rates based on a division of tonnage between CFA and the ports, don't you think probably Hampton Roads differential should be increased rather than decreased, you having twice as much tonnage as Hampton Roads?

A. No, I can't agree with any such arbitrary basis. After all, you know as well as I do that the C & O comes into Hampton Roads and you want the same rates as the N & W and N & W comes into Hampton Roads and want the same

rates as the C & O. You have to have competition and you have to have the same rate. It is silly talking about having a higher rate here and a higher rate, a lower rate there.

[fol. 297] Q. You want Hampton Roads to get a little of that traffic, do you?

A. Certainly, we did not say we were going to take a pound away from Hampton Roads.

Q. You have already taken it away from us, 2 to 1.

Exam. Boat: That is one of the prime questions in this case, one of the most difficult, probably.

The Witness: It sure is.

Exam. Boat: I hope we will have some evidence here from which we can determine it.

Mr. Walker: I understand the witness to say that he thought this rate adjustment should be based on the amount of tonnage handled. If he is, then I submit—I will not submit it, either—but I think the question should be answered as to whether or not he thinks the Hampton Roads differential is already too low if you based it on tonnage.

The Witness: Certainly you would not want to have a lower rate than Baltimore, would you?

Mr. Walker: A lower rate than Baltimore?

The Witness: Yes.

Mr. Walker: We will not object.

By Mr. Marbury:

Q. Mr. Laux, you are familiar with the fact, are you not, that top cargo is moving from Boston's yard to New York for export?

A. I am not familiar with it.

[fol. 298] Q. You are not?

A. But I have been told about it.

Q. You know it is a fact, do you not?

A. Yes, but it does not amount to anything.

Q. It does not amount to anything?

A. No.

Q. Have you read the testimony of the Boston witnesses in this case?

A. I did not read them thoroughly, but I know some reference was made to it.

Q. They say in fact to this effect: It amounts to a great deal. What explanation have you got for the fact that New England's top cargo, most of its general cargo, is moving through the Port of New York rather than through the Port of Boston?

A. I think that is a deal that is made with the vendor, where a person wants to buy something, maybe machinery and tools, he can buy it over in New Jersey and the fellow in Boston wants to sell it, so he tells the man in Boston, "All right, I will buy it, but I want it to go on this ship." That is the case. In other cases we find where a steamer unloads in Boston and he has a bill of lading from New York. He may not want to go to New York. He may want to go to Baltimore next, so the steamship line pays the freight to move the cargo from Boston to New York to [fol. 299] complete the billing agreement.

Q. You did not understand my question. My question is why does the traffic, the general cargo traffic which is generated in New England, in Boston's hinterland, moves through the Port of New York for export, rather than through Boston?

Mr. Moerman: I object.

Mr. Foley: I object on the ground the witness has not been qualified as to New England Traffic.

Mr. Marbury: He testified he knows it is a fact.

Mr. Foley: I understood him to testify that he did not know the fact, but he was making certain surmises—

Mr. Marbury: The Boston area witnesses testified to that. They say they cannot compete with New York.

Exam. Boat: Those witnesses probably will be able to develop that. I think that best be done by those witnesses.

Mr. Marbury: I think this is impeachment to show that this witness has undertaken to say that New York has not got any attraction at all, that no traffic moves through New York because New York has worse rates and that nothing influences traffic except rates.

Now, I am just trying to show that that is obviously not a fact. And I would like to impeach this witness' testimony

by taking an example with which he is familiar, with which we are all familiar, to show that traffic does move through [fol. 300] New York from the hinterland of not only Boston but I could say Baltimore and Norfolk. Cigarettes move right past Baltimore and Norfolk to New York. You know that is a fact, don't you, Mr. Laux, that cigarettes move past Baltimore and Philadelphia and Norfolk to New York, you know that is a fact, don't you?

Mr. Foley: Mr. Examiner, there is a question pending before this one and there are two objections.

Mr. Marbury: I withdraw it.

By Mr. Marbury:

Q. You know as a fact, do you not, that cigarettes move from North Carolina and Virginia right past the Ports of Baltimore, Norfolk, Philadelphia, to New York?

You know that is a fact, do you not?

A. Before I answer, I would like to know what that—

Q. I am asking you whether you know that is a fact.

A. Yes, I know it is a fact.

Q. Why?

A. Search me, maybe somebody is crazy.

Q. You have no idea?

A. No, I have no idea at all.

Q. Is it not because they have the steamship service that they need in New York and not elsewhere?

A. I would not know.

Q. You would not know?

[fol. 301] A. No.

Q. In other words, you have no idea as to what brings traffic to New York at all?

A. No; somebody is crazy.

Q. Somebody is just crazy?

A. Yes.

Mr. Marbury: No further questions.

By Mr. Hanifin:

Q. Mr. Laux—

A. May I ask you a question first? Who do you represent?

Q. Chesapeake & Ohio Railway.

A. O.K.

Q. Mr. Marbury has already inquired of you as to the cigarettes. I wrote down here the words as you spoke them, that rates are the only consideration with respect to the movement of traffic; or the influence—I did not get it all because I am not very good at shorthand. Now, would you try again to reconstruct if you can, sir, any possible reason why tobacco originating and manufactured in the Richmond-Petersburg and even in Southern territory from Reedsville, Durham, Raleigh and those points such as that, move past Newport News, Norfolk, Baltimore, Philadelphia and into New York and are exported through that port?

Mr. Moerman: Hold it. It has not been established to my satisfaction yet by anybody that anything like that happens. And until such time as it is established, this [fol. 302] witness cannot answer that question.

Mr. Marbury: The witness has—

Mr. Hanifin: Just a minute. Are you familiar with the record in this proceeding, Mr. Moerman?

Mr. Foley: That is not in the record.

Mr. Hanifin: I asked Mr. Moerman if he was basing his statement on something that is not in the record.

Mr. Moerman: I am familiar with the record in this case.

Mr. Hanifin: I refer you to the statement of A. J. Kneesy.

Mr. Moerman: That is not in the record. Do not refer me to it until it is put into the record.

Mr. Hanifin: If the Examiner please, this information was submitted to all parties so that cross-examination could be had on the basis of the entire record, the entire presentation. This material has been submitted in this record.

Mr. Moerman: Let us have it marked at least for identification so we know what it is.

Mr. Foley: The witness has been called for cross-examination and the material has not been admitted and it is not established.

Mr. Moerman: How about letting the witness answer these questions?

Mr. Hanifin: I am not certain what the objection is. [fol. 303] But if there is one, I would like to hear it restated.

Mr. Moerman: The objection is simply that the fact upon which the question is asked, Mr. Hanifin, has not been established on this record.

Mr. Hanifin: All right.

Mr. Examiner, I will ask Mr. Laux to assume this fact pending the introduction of this testimony into evidence.

Mr. Moerman: And I say we should not do that because we have a specific witness on this specific question and the question should be held until such time as a proper cross-examination is made of the precise witness, who is dealing with this point.

Mr. Hanifin: Will you recall Mr. Laux at that time after Mr. Kneesy has put in his testimony?

Mr. Moerman: He will be here, I give you my pledge.

Mr. Walker: We have a witness on the stand who said he knew this happened. Why can't he answer this now, if he knows?

Mr. Moerman: I have no objection to having the witness queries as to whether or not he knows the fact.

Mr. Hanifin: I understand in response to Mr. Marbury's questions that he said he did know it is a fact.

Mr. Moerman: Maybe I owe you an apology, sir.

Mr. Hanifin: Wasn't that your response to Mr. Marbury?

The Witness: He mentioned some tonnage about Boston moving through New York. Then Maryland and Baltimore. [fol. 304] Now you are bringing in Virginia. Next you are going to bring in Texas. I cannot tell you about it.

Q. From Texas to New York, I think that would be an even better point—

A. I just do not know. I just said somebody must have a screw loose. Mr. Kneesy must be an exporter, so ask him. I know Kneesy for 30 years.

By Mr. Hanifin:

Q. Mr. Laux, to get an orderly presentation of this thing, do you or do you not know, sir, as a fact that there is traffic moving from Virginia and Carolina origins, either

or both, of cigarettes and manufactured tobacco, that is presently and has been for sometime exported through the Port of New York?

A. Do I know it is moving?

Q. Yes.

A. That is the question?

Q. Yes.

A. I saw some movements, yes and they were very small. In other words, you do not move it in cargo lots. You might move it in 10 cases or 5 cases—and 10 to 1 the cigarettes are for the use of the ship that does not even pay a tax.

Mr. Marbury: That is an irresponsible statement.

The Witness: That is right.

Mr. Hanifin: Suppose I would drop this line of questioning—

[fol. 305] A. I would—

Mr. Hanifin: —if I may, sir, until Mr. Kneesy has taken the stand and then I would like to recall Mr. Laux at that time.

Exam. Boat: Very well.

By Mr. Hanifin:

Q. Mr. Laux, you were, I believe, a little confused in your factual statements. Did you represent that there are only three carriers serving the Port of Hampton Roads?

A. I was talking about carriers operating to and from CFA. Now the Southern Railway, I think you fellows mentioned that they are not a competitor from Hampton Roads, the Southern Railway, or Seaboard Airlines, or the Norfolk and Southern, and Atlantic Coastline. So I was only referring to those three railroads, the C & O, N & W and Virginia.

Q. C & D, N & W, Virginian, Coastline, Seaboard and Southern, A & D, Norfolk, Southern, all publish import and export rates to and from Hampton Roads, do they not?

A. I do not know.

Q. You do not know that, sir?

A. I did not know all the others did. I knew the Atlantic Coastline—the C & O and N & W and Virginian did.

Q. How about the Pennsylvania Railroad, did you ever hear of them?

A. I did not look at the tariff.

[fol. 306] Q. You did not?

A. I would not be surprised if the Pennsylvania operates from Savannah, they operate from every other point.

Q. In so far as numbers are concerned, there are the same numbers of lines serving Hampton Roads as serve New York, are there not?

A. Yes, you got a good railroad system down there.

Q. And I might also add that they can and do participate in differential traffic?

A. If that is so, I will agree with you.

Q. All right, sir, just a few more questions. I am a little confused about one of your exhibits, Mr. Laux. Would you turn to sheet 36, sir, of the exhibit G-1.

A. That is a tariff exhibit, is it?

Q. Yes.

A. 36.

Q. Yes, sir. Do you have that, sir?

A. Wait a minute. I have not looked at this thing since last June. Yes, schedule of Rates and Tariff Rules, No. 41, is that it?

Q. Yes, sir. If you continue on reading it says naming rates and conditions from North Atlantic Ports of the United States in the Hampton Roads/Portland range to all ports of call in England, Scotland, Wales, northern Ireland, and the Republic of Ireland. Hereinafter called the United Kingdom or U.K.

[fol. 307] If you will turn to page 8, I take it that is a list of participating carriers in this tariff, right?

A. Right.

Q. Now, sir, can you tell me what, if any of those lines serve Hampton Roads?

A. I do not know. You had better ask the lines. I did not check on which of those lines serve the different ports or piers.

Q. That is perfectly all right, sir. It is plain then on the record that you do not hold these tariffs out as a representation of service by the lines participating in the tariffs to and from all ports for which the rates are allegedly published?

A. That is a tariff, right, just like a railroad tariff?

Q. Yes.

A. Now, if the participants in here do not choose to give you service, you ought to talk to the carriers, not to me.

Q. I do not have any complaint with the carriers—I just want to know from you, sir, if it is your representation or your testimony that the participating carriers in this or any other of the tariffs which you have submitted in this proceeding actually serve the ports listed, and if so, which ones?

A. I did not testify along that line at all, and if you read my testimony carefully, you will find I am correct. We put this exhibit in this case for one purpose only, to dispel any [fol. 308] arguments that the rates were different.

We showed these tariffs, and we went to—all provide for the same rates to the North Atlantic ports, and we paid no attention whatever as to the steamship lines participating in these tariffs, we did not even look at them.

Q. You have no further information as to whether all or any of those lines actually perform service from Hampton Roads or for that matter any of the other ports?

A. New York, I do not even know anything about New York, maybe they do not operate to and from New York.

Mr. Hanifin: That is all I have, sir.

Exam. Boat: I think we should suspend at this time. Is there any thought about the time at which you will start tomorrow? Is it convenient to start any earlier?

Is there any desire to start earlier?

Mr. Keenan: While I have it in mind, I could tell you that the passenger deficit investigation is next door. I was able to find out what New Haven's passenger deficit was if Mr. Bongartz wants to tell us about the Pennsylvania's.

Mr. Bongartz: You go first?

Mr. Keenan: Do you want me to go first?

Mr. Bongartz: I do not have the figure presently.

Mr. Keenan: I had better wait until tomorrow.

Exam. Boat: We will adjourn until 9:30.

(At 4:12 p.m. the hearing adjourned until 9:30 Feb. 19, 1958.)

[fol. 309]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

I & S Docket 6615

FSA Docket No. 32204

February 19, 1958

Met, pursuant to adjournment, at 9:30 a.m.

Before: Marion L. Boat, Examiner.

APPEARANCES:

As heretofore indicated.

[fol. 311] PROCEEDINGS

Exam. Boat: Come to order, please, gentlemen.

Mr. Foley: Mr. Examiner, a preliminary matter.

Exam. Boat: Yes.

Mr. Foley: We had originally called Mr. Childs for cross-examination. I have just told Mr. Langdon we will not want him, we will waive cross-examination of Mr. Childs.

Exam. Boat: Is there anyone else interested in the cross-examination of Mr. Childs?

Mr. Macleay: He was also called by counsel for GSA. I wonder if we could have an expression from him if he wants him, otherwise I will be happy to tell him he does not have to come.

Exam. Boat: Is Mr. Miller present?

(No response.)

Mr. Dennison is not here.

Well, off the record.

(Discussion was off the record.)

Exam. Boat: On the record.

Mr. Foley: I have distributed this morning verified

statements of the Associated Industries of Massachusetts, of the Department of Commerce of the Commonwealth, and of New England Council.

Witnesses will be available either late in the day or tomorrow for cross-examination.

Exam. Boat: Very well.

[fol. 312] I think we are ready to continue with the cross-examination of Mr. Laux now.

E. K. Laux resumed the stand and testified further as follows:

Exam. Boat: I think we have finished cross.

Mr. Langdon: We have finished, sir.

Redirect examination.

By Mr. Moerman:

Q. Mr. Laux, in connection with this I believe Mr. Hanifin asked you regarding the statements—now I have before me something served on me called "Verified Statement of F.S. Baird."

Mr. Baird says he is a vice president in charge of traffic of Norfolk & Western Railway Company.

Yesterday Mr. Hanifin queried you with regard to the number of railroads at Hampton Roads, I believe, or at Norfolk.

A. Yes.

Q. I have a sentence in the verified statement of Mr. Baird which is very brief. It says, "I am testifying in this proceeding on behalf of the major"—mind you—"major railroads serving the Port of Hampton Roads, i.e. The Norfolk and Western, the Chesapeake & Ohio and the Virginian."

Do you disagree with that statement that these three railroads are the major railroads serving Hampton Roads?

[fol. 313] A. I do, yes, sir.

Q. What is that?

A. They are not the major railroads, there are others besides them that are pretty good-sized railroads. (Laughter)

I can amplify that by saying they are the major railroads to and from CFA, that is the way we want to say it.

Q. That is the answer I want. Thank you. (Laughter)

Mr. Moerman: I think I owe Mr. Laux an apology because the question should have indicated CFA.

By Mr. Moerman:

Q. Now, Mr. Laux, I have another statement furnished us which is the verified statement of Mr. W. C. Sawyer, who says—

Mr. Hanifin: If the Examiner please, is there a different rule for counsel for the New York Port Authority than counsel for the Chesapeake & Ohio? I recall yesterday objection was made to reference to testimony that had not been introduced in this proceeding.

Frankly, I was not terribly concerned by reference to Mr. Baird, but now I find Mr. Moerman intends to pursue the matter further.

I limited my cross questioning and requested Mr. Laux to return to the stand after those statements had been introduced, and I think what is fair for me is fair for him, too.

So I would object to any further cross-questioning at this time with respect to that.

[fol. 314] Mr. Moerman: Mr. Examiner, there is a distinction. I have here material on the other side which I am using on redirect examination.

Mr. Hanifin was using material on his side which he did not have before him, he was not reading from it, we did not have it before us; we did not know what it was. But this is material on the other side which I am using which is admission on their side which I am using to bring out on redirect examination as against the cross-examination by Mr. Hanifin.

Mr. Hanifin: If the Examiner please, there has been no cross-questioning so I hardly see how Mr. Moerman reaches redirect because I had not finished my cross examination on that point.

It was understood that Mr. Laux would return to the stand to be cross-questioned along the lines that we deferred yesterday afternoon.

Mr. Moerman: Let us talk about the specific point. Mr. Laux was queried with respect to the number of railroads at Hampton Roads, compared with the number of railroads at New York, and this is the point on which I want to inquire on redirect.

Exam. Boat: I think it is a fact that we can develop, or what should be developed probably here, if you can, to do it by the most direct method. It will get into this record somehow or other, and I suggest we go ahead while Mr. Laux is here.

[fol. 315] Mr. Moerman: I only have one or two questions.

Mr. Sawyer says of the railroads which serve Hampton Roads, only the N & W, the Virginian, the C & O, and last but not least, the Pennsylvania, are important in the movement of import and export traffic to and from differential territory.

By Mr. Moerman:

Q. Do you have any disagreement with that statement?

A. I agree with it fully.

Q. Let me read the statement again because I may have interpolated:

From page 3 of Mr. W. C. Sawyer's statement:

"Of the railroads which serve Hampton Roads, only the N & W, The Virginian, the C & O, and the Pennsylvania are important in the movement of import and export traffic to and from differential territory."

Now, just the one more question:

Do you disagree with that observation?

A. No, sir, I do not disagree with it.

Q. Just one more.

On the same page Mr. Sawyer says, "To illustrate this fact we made a check of traffic moving over our Lamberts' Point and Sewell's Point piers for the year 1956, and find that the Southern Railway handled only two cars during

that period, and the A & D only 16 cars to and from differ-
[fol. 316] ential territory."

"This, of course, is insignificant considering the fact that in the same year the Norfolk and Western handled a total of 20,873 cars of import and export traffic to and from differential territory points."

Now, Mr. Laux, do you have any quarrel with what I just read you?

A. No, sir.

Mr. Moerman: That is all.
Thank you very much.

Recross examination.

By Mr. Hanifin:

Q. Mr. Laux, will you enumerate the railroads you had in mind as being the ones serving New York that you included in your count of those that should participate in some kind of a "Fair Share of the Traffic"?

A. The New York Central, Erie Railroad, the Delaware, Lackawanna and Western, Lehigh Valley, New York, New Haven and Hartford, New York, Susquehanna and Western, the Baltimore and Ohio, the Pennsylvania—that is about it. There are eight railroads.

Q. How many cars, sir, did the New Haven handle to and from differential territory during the period studied?

A. I do not know.

I know they testified about the tonnage they handled—

Q. Do you recall something to the effect of 16 cars?

A. I am not sure.

[fol. 317] Of course I might make this observation: The New Haven is a New England Railroad, and I think their big interest is to and from Boston, although they do handle some cars to and from New York.

Mr. Keenan: I will stipulate the 16 cars, Mr. Hanifin.

By Mr. Hanifin:

Q. How about the Susquehanna, sir?
A. That is an important railroad.
Q. How many cars did they handle?
A. I do not know.
Q. You don't know, sir?
A. No, sir.
Q. You do not know how many cars they handled to and from the differential territory?
A. No, sir.
Q. Nevertheless you reached the conclusion it is an important railroad?
A. It is an important railroad, we see it operating every day.
Q. Important in the context we are talking about at the present time?
A. That is true.

Mr. Walker: Does the Susquehanna handle any export-import traffic?

A. Yes, sir.
Q. They have an embargo don't they?
[fol. 318] A. No, I do not know of any embargo.

By Mr. Walker:

Q. You do not know about that?
A. No.
Q. You said you were appearing here to help out the New York Railroads get some traffic. Are you also appearing in support to help out the Pennslyvania, the B & O on the New York traffic?
A. Well, they filed equalized rates.
I suppose we should stand by them.

Redirect examination.

By Mr. Moerman:

Q. Mr. Laux, did you for some reason omit the C.N.J. from your list?

A. Yes, I overlooked the CNJ; although they have not filed equalized rates, they still serve New York.

Mr. Moerman: Mr. Examiner, I have no further redirect.

Exam. Boat: That seems to be all, Mr. Laux.

OFFERS IN EVIDENCE

Mr. Moerman: I offer Mr. Laux's testimony and exhibits in evidence.

Exam. Boat: That will be received as exhibit No. 17.

(Exhibit No. 17, Witness E. K. Laux, in Support of Respondents.)

Exam. Boat: That completes your presentation, Mr. Moerman?

Mr. Moerman: I have seven verified statements. The witnesses were not called for cross-examination.

[fol. 319] On your list the first one following Mr. Laux is Mr. J. Patterson.

I have here the original verified statement of Mr. Patterson which has been served in accordance with the rules of procedure, and I offer this statement in evidence.

Exam. Boat: That may be admitted.

Mr. Moerman: Mr. Reporter, there are eight statements in all, not seven.

Exam. Boat: We will identify Mr. Patterson's statement as exhibit No. 18.

(Exhibit 18, Witness Patterson in Support of Respondents was marked for identification.)

Mr. Moerman: Mr. Examiner, I offer next the verified statement of witness Edmund A. Senghas, assistant general traffic manager of the National Biscuit Company.

Exam. Boat: That may be identified as Exhibit 19.

(Exhibit 19, Witness Senghas in Support of Respondents was marked for identification.)

Mr. Moerman: Mr. Examiner, I offer now in evidence the verified statement of Howard G. Seymour, President of the New York Foreign Freight Forwarders and Brokers Association, Inc.

Exam. Boat: That will be identified as exhibit 20.

(Exhibit 20, Witness Seymour in support of Respondents was marked for identification.)

[fol. 320] Mr. Moerman: Mr. Examiner, I offer now in evidence the verified statement of witness R. Hamlin, Assistant Traffic Manager of the Union Metal Manufacturing Company.

Exam. Boat: That is identified as exhibit 21.

(Exhibit No. 21, Witness Hamlin in support of Respondents was marked for identification.)

Mr. Moerman: Mr. Examiner, I offer into evidence at this time the verified statement of C. P. Kelsey, Export Manager of the Weatherhead Company.

Exam. Boat: Identified as exhibit 22.

(Exhibit No. 22, Witness Kelsey in support of Respondents was marked for identification.)

Mr. Moerman: Mr. Examiner, I offer for identification the verified statement of Colin D. Mawer, Jr., assistant secretary and Import-Export traffic manager of Mawer-Gulden-Annis.

Exam. Boat: That is identified as exhibit 23.

(Exhibit No. 23, Witness Mawer in support of Respondents was marked for identification.)

Mr. Moerman: Mr. Examiner, I offer in evidence the verified statement of Raymond C. Sell, Traffic Manager of the Coehring Company.

Exam. Boat: That may be identified as exhibit 24.

(Exhibit 24, Witness Sell, in support of Respondents was marked for identification.)

[fol. 321] Mr. Moerman: Mr. Examiner, I offer in evidence the verified statement of Witness Melvin A. York, Traffic Manager E. W. Bliss & Company.

Exam. Boat: That is identified as exhibit 25.

(Exhibit No. 25, Witness York, in support of Respondents was marked for identification.)

Mr. Moerman: That is all I have, Mr. Examiner.

Exam. Boat: Thank you.

Now, we are down to Mr. O'Halloran's statement. Who will offer that?

Mr. Foley: I believe that is my witness.

May I have the following identified, Mr. Examiner, first the statement entitled, "Verified Testimony of John F. O'Halloran."

Exam. Boat: Yes, that may be identified together with the supporting papers.

Mr. Foley: Which I described in it?

Exam. Boat: That is right.

That will be identified as exhibit 26.

(Exhibit 26, Witness O'Halloran in support of Respondents was marked for identification.)

Mr. Foley: May I have identified, also, Mr. Examiner, the verified testimony and accompanying exhibits of John [fol. 322] J. O'Halloran?

Exam. Boat: Yes, sir.

That may be identified as exhibit 27.

(Exhibit No. 27, Witness John J. O'Halloran, was marked for identification in support of Respondents.)

Mr. Foley: Mr. Examiner, I have next the verified statement of Benjamin J. Brooks, and accompanying exhibits.

Exam. Boat: That will be identified as exhibit 28.

(Exhibit No. 28, Witness Brooks in support of Respondents was marked for identification.)

Mr. Foley: I now would like to have marked for identification the verified statement, the verified testimony of William H. Day, with accompanying exhibits.

Exam. Boat: That will be identified as 29.

(Exhibit No. 29, Witness Day in support of Respondents was marked for identification.)

Mr. Langdon: Mr. Examiner, in connection with the statement of Mr. Day, this schedule here shows 30 minutes have been assigned for cross-examination. We have excused Mr. Day from cross-examination but in connection with his statement, we should like to offer for the record

copies of a report of the Advisory Council to the Port of Boston Commission submitted to the Governor of Massachusetts under date of December 2, 1957. Also a supplementary report of the same council submitted to the [fol. 323] Governor of Massachusetts under date of December 31, 1957.

The reason I mention these two reports at this moment is that Mr. Day, as we understand it, was one of those who signed both reports.

Extra copies are due here momentarily, Mr. Examiner. I spoke to Mr. Foley about them, and as I understand it, he will accept their authenticity, though what further comment if any he has to make with regard to them I am not of course sure.

Mr. Foley: Mr. Examiner, I might say as far as authenticity goes, I have no knowledge as to whether Mr. Day participated in this report.

There is a printed signature under a line, but I do not know whether Mr. Day participated. You asked me the other day. I have no question but that this is a report of some committee, in some informal committee to the Governor, but you will see later when it is offered, Mr Examiner, it is purely conclusionary, there is no evidence of facts at all, and I have no knowledge that Mr. Day participated in it.

I know his name is printed there as one of the many signers, but whether he ever saw the report I have no knowledge.

Mr. Keenan: May I be heard, Mr. Examiner?

[fol. 324] I am William Keenan, representing the New Haven Railroad.

Inasmuch as we serve the Port of Boston, we have an obvious interest with regard to the introd tion of this sort of evidence.

I, certainly, am, myself, not in any position to stipulate or agree to the authenticity of any description of this document, whatever it is, to Mr. Day in the first place.

In the second place, I have not seen a copy of either of these things myself, obviously I guess, due to the fact Mr. Langdon has not been able to get some extra copies in the room yet.

I assume I will see them before we proceed further on this matter.

I wonder if, until I can get a copy and until a copy can be distributed, he can postpone the tender of this evidence? I think it is not possible to deal with it in any sort of an orderly fashion.

Mr. Langdon: Perhaps that is fair, and as soon as these extra copies arrive, they will be distributed. I did, however, want to mention the tender at the appropriate time of these reports.

Mr. Keenan: Well, I will advise—

Mr. Langdon: I am wondering if, at this time, we could not postpone the receipt of witness' Day's statement.

[fol. 325] It has already been marked—as exhibit 29.

Mr. Keenan: I will oppose that, Mr. Examiner, if Mr. Foley will be so good as to allow me, because it is my understanding it is the time now to submit Mr. Day's statement.

There is no objection to it whatsoever, and there is no reason whatsoever to postpone its submission. I do not think the reception of this statement in evidence should be in any way jeopardized or suggested even to be contingent on the regular tender of some sort of a document that is virtually anonymous to the Commission outside of the ordinary scope of the rules governing this proceeding.

Mr. Foley: Mr. Examiner, cross-examination has been waived, so I see no objection to receiving this exhibit.

Mr. Langdon: If the authenticity of this report is going to be questioned, or there is any doubt about the report, they will have to—we will have to modify our position about waiving cross-examination on Mr. Day.

Mr. Foley: Mr. Examiner, it is too late for that. That has been waived.

Mr. Langdon: Well, I know, but we will have to get him down here, then perhaps as our own witness, because we want this report in evidence.

Mr. Keenan: That is perfectly all right.

Mr. Foley: When they present their case, they can call [fol. 326] any witness they choose.

Exam. Boat: I understand this testimony of Mr. Day constitutes Mr. Foley's case.

Mr. Foley: That is part of our case.

Examiner Boat: Whatever you are going to put in will be your case, understand, if we receive it. I think with that explanation, we can receive the exhibit No. 29, as Mr. Foley has identified it.

We will take up this other matter when we have the time.

Mr. Langdon: I think we will have to call witness Day as our own witness, then, and we ask if counsel for the Boston Port Authority will be good enough to oblige by having him here. If not, then we will have to ask for a subpoena.

Mr. Foley: I will be glad to inform Mr. Day.

Mr. Keenan: Again, if Mr. Foley will allow me, I think that any tender of evidence subsequent to this hearing ought to be made in accordance with whatever rules are going to govern the subsequent portions of this proceeding, Mr. Examiner.

The fact Mr. Day is not my witness or a witness offered to the Commission by my client, the fact remains in the interest of the Boston Railroads, I think it would be appropriate to object to the arrangement for any further testimony outside the explicit scope of rules that have been very carefully worked out for the conduct of this very, [fol. 327] very complex affair in an effort to be just and fair to all the parties and all the interests which conflict here.

At the close of this hearing, if the southern tier interests want to make the suggestion that further evidence should be introduced in the record in their behalf, I think that would be the time to entertain the suggestion and deal with it on its merits.

I would object to it, at this time any way, until we can give it mature consideration, to the proposition or proposal that we arrange for subpoena or something like that of furthe, witnesses for oral testimony on direct at this hearing that has not been provided for and anticipated by the arrangements thus far made.

Mr. Langdon: I have before me here three statements distributed by the Boston interests that were not filed in accordance with the rules set up for this proceeding which

I understand they propose to tender now which I have not had a chance to examine or read.

If the rule is to be applied, it should be applied, also of course against them. The point is, we are going to have to ask for a subpoena for Mr. Day if the other side will not voluntarily produce the witness.

Mr. Foley: May I proceed with my case, Mr. Examiner? There is nothing really before us at the moment.

Exam. Boat: The Special Rules of Procedure contemplate the receipt of evidence in addition to that which we [fol. 328] have received thus far.

While we can accomplish a great deal by receiving evidence in this manner and distributing this beforehand, I think it does contemplate the receipt of other evidence.

With that understanding, we will proceed until we complete this case.

Mr. Foley: If the Examiner please, might I now have marked for identification the verified testimony of Dr. George H. Ellis.

Exam. Boat: It will be identified as exhibit 30.

(Exhibit No. 30, Witness Ellis, in support of Respondents is marked for identification.)

Mr. Foley: Now, might I offer, Mr. Examiner, the verified testimony or ask that it be marked for identification, verified testimony of Dr. D. Phillip Locklin.

Exam. Boat: That may be identified as exhibit 31.

(Exhibit No. 31, Witness Locklin in support of Respondents is marked for identification.)

Mr. Foley: Now, Mr. Examiner, may I have these exhibits which I have asked to have marked for identification, received in evidence? They are numbered 26 through 31, both inclusive.

May they be received, Mr. Examiner.

[fol. 329] Exam. Boat: Yes, I think I have already identified those.

Mr. Foley: That is correct.

Exam. Boat: Exhibits 26 through 31, there being no objection, are received in evidence.

(Exhibits 26 through 31, inclusive in support of Respondents are received in evidence.)

Mr. Moerman: Mr. Examiner, the reporter says I did not offer my exhibits in evidence. I thought I had. If I haven't, I would certainly like to.

Exam. Boat: We identified them, of course.

If the record does not show that—

Mr. Moerman: They are numbers 15 through 25.

Exam. Boat: 15 through 25.

Mr. Moerman: That covers all of my case.

Exam. Boat: If the record does not already show it, it will show them as being received in evidence.

(Exhibits 15 through 25 in support of respondents are received in evidence.)

Mr. Moerman: Thank you, Mr. Examiner.

Mr. Foley: I wondered if this might be an appropriate time for me to present and have marked for identification also—this is not part of my case, but I am doing it—I am making this offer because I have been asked to by a representative of the Commonwealth.

[fol. 330] I would like to offer the verified statement of John T. Burke, Commissioner of the Commonwealth of Massachusetts Department of Commerce.

Mr. Foley: Mr. Rigney, who is Deputy Commissioner, is here and available for cross-examination.

Mr. Welsh: Has that been distributed?

Mr. Foley: It has been distributed to the opposition. It has not been distributed to our side.

Exam. Boat: We can identify that as exhibit 32.

(Exhibit No. 32, Witness Burke, in support of Respondents was marked for identification.)

Mr. Foley: May that be received in evidence?

Exam. Boat: Any objection?

Mr. Bongartz: I do not think we are in position to pass on this at the moment.

Exam. Boat: Sir?

Mr. Bongartz: I think the offer should be deferred.

Mr. Langdon: We have not seen these until just two minutes ago.

Exam. Boat: I am wondering whether the same applies to the others.

Mr. Foley: The others are not here as yet, your Honor. They will be available for cross-examination.

Exam. Boat: Why not defer this until after the noon recess, and that will give the other side a chance to look [fol. 331] over the exhibits.

Exam. Boat: Off the record.

(Discussion was off the record.)

Exam. Boat: On the record.

Exhibit No. 32 has been withdrawn from identification.

Mr. Keenan: In an abundance of caution, may I advise the Examiner and the parties that, regardless of whether the Baltimore, Philadelphia and the Hampton Roads interests object or do not object to the tender of evidence which Mr. Foley plans to make, I understand, after the noon recess, in behalf of the Boston railroads I certainly do not waive any objection I have to a tender of evidence such as has been suggested by Mr. Langdon.

Mr. Brandes: Mr. Examiner, I would like to have marked for identification the verified statement of Robert F. Wagner, Mayor of the City of New York.

Exam. Boat: That may be identified as exhibit 32.

(Previous Exhibit 32, Witness Burke was withdrawn.)

(Exhibit No. 32, Witness Wagner, in support of Respondents was marked for identification.)

Mr. Brandes: I would like now to offer the verified statement of Vincent A. G. O'Connor, Commissioner of Marine and Aviation of the City of New York for identification.

Exam. Boat: That will be identified as No. 33.

[fol. 332] (Exhibit No. 33 Witness O'Connor in Support of Respondents was marked for identification.)

Mr. Brandes: Mr. Examiner, I now offer these statements in evidence.

Exam. Boat: Cross-examination has been waived.

Mr. Brandes: Yes, sir.

Exam. Boat: There being no objection, they are received in evidence, 32 and 33, in support of respondents.

(Exhibits 32 and 33 were received in evidence.)

Mr. Shinn: Mr. Examiner, I tender for identification the original verified statement of Mr. J. L. Pease, witness for the Department of Agriculture.

J. L. Pease was sworn as a witness and testified as follows:

Exam. Boat: That may be identified as No. 34.

(Exhibit No. 34, Witness Pease, in support of Respondents was marked for identification.)

Direct examination.

By Mr. Shinn:

Q. What is your name, sir?

A. J. L. Pease.

Q. Mr. Pease, do you have a comment in clarification regarding the second full paragraph on page 6 of your verified statement?

[fol. 333] A. Yes, I have.

In the second full paragraph of page 6, line 5, I would like to delete the word "now."

Mr. Macleay: How will it read now?

The Witness: It will read "The department believes that equalization of the class and commodity rates on Export-Import cost which is an intercoastal traffic at all north Atlantic Ports, Hampton Roads, Virginia and North thereof, to and including St. Johns; New Brunswick, Canada, including Albany, New York, on the basis of the rates applicable to Baltimore, Maryland, and Norfolk, Virginia, will be in the interest of the Agricultural Community."

Mr. Shinn: You may inquire.

Cross examination.

By Mr. Macleay:

Q. By that do you mean, Mr. Pease, that you would support equalization on the basis of the higher level of rates now applicable to New York?

A. No, sir.

Q. You appear here, I believe, on behalf of Secretary Benson, is that correct?

A. Yes, sir, that is right.

Q. Does Secretary Benson oppose the proposed reductions for the export-import rates through Baltimore and Hampton Roads and Philadelphia?

[fol. 334] A. You mean the reduced rates which are here under suspension, also?

Q. Yes.

A. No, sir, we do not oppose it.

Q. Do you support them?

A. Yes, sir.

Mr. Macleay: That is all I have, Mr. Pease. Thank you very much.

Exam. Boat: Any redirect?

Mr. Moerman: Let's have the testimony read.

It is so short, there is some question about it.

Exam. Boat: Are you making that request?

Mr. Moerman: Yes, I make it seriously.

Exam. Boat: To have all of the testimony read?

Mr. Moerman: No, just the Macleay's questions and answers.

Mr. Macleay: I did not hear the request.

Mr. Moerman: Sir?

Mr. Macleay: I did not hear the request.

Mr. Moerman: I did not hear the question and answer clearly. I would like to have them repeated.

Exam. Boat: Will you read it, please, Mr. Reporter, Mr. Macleay's questions and the answers?

(Thereupon the reporter read the record as previously recorded.)

[fol. 335] Redirect examination.

By Mr. Shinn:

Q. Mr. Pease, will you clarify the position of the Department—

Mr. Macleay: Excuse me.

I cannot hear counsel; I wonder if he could give us the benefit of what he is saying.

By Mr. Shinn:

Q. Mr. Pease, would you make a somewhat more comprehensive statement with regard to the position of the Department regarding the equalization of rates contested here, perhaps as illustrated by your testimony on page 6 of your verified statement?

A. Yes, if the Commission finds in this—

Mr. Macleay: Just a moment, Mr. Examiner, is he asking the witness to repeat what he has already put forth on page 6 of this verified statement?

If so, I am going to object, as that is purely repetitious.

Exam. Boat: I don't understand it is an exact repetition.

Mr. Macleay: He did not ask him a question, Mr. Examiner. He is asking him to elaborate on his testimony, by reference to page 6 of the exhibit.

Mr. Shinn: There seems to be some confusion regarding his position.

Mr. Macleay: I don't think there is any confusion at all, [fol. 336] he stated it clear as a bell.

Mr. Moerman: Mr. Reilly will ask him, he is the one who became confused first.

Go ahead, Jack.

Redirect examination.

By Mr. Reilly:

Q. Mr. Pease, you understand that the Ports of New York, Boston, and the North Atlantic Ports filed tariffs which would equalize the export-import rates through all the ports on the Atlantic Coast, from Hampton Roads, north?

A. Yes.

Q. Do you then understand the roads serving Baltimore, Philadelphia, and Hampton Roads filed tariffs which would restore the differential?

A. Yes.

Q. Do you understand that the Commission suspended all of the rates?

A. Yes.

Q. Now, is it the position of the Department of Agriculture that they are supporting equalization in removing the differential, whatever level it may be, proposed by Philadelphia, Baltimore, and Hampton Roads?

A. As I started to say before, if the Commission finds in this proceeding that the reduced rates from Baltimore and Norfolk now under suspension are reasonable, that is the [fol. 337] level we want applied to New York and Boston.

Mr. Reilly: Thank you very much, sir.

Exam. Boat: Is there further redirect?

Mr. Shinn: No.

Recross examination.

By Mr. Hanifin:

Q. May I inquire, sir, does that mean you would be seeking a further reduction in New York's rates?

A. That is the way it would work out, yes, sir.

Q. In other words, that you would be supporting a rate level which is not now before the Commission in this proceeding, that is, a further reduction in New York's rates?

A. Yes.

Q. May I inquire one more thing, sir: Are you supporting the reduction or the equalization?

A. We are supporting equalization on whatever basis the Commission finds proper.

Q. But your statement is that you are looking for the lowest level of rates?

A. Yes, that is right.

Cross examination.

By Mr. Macleay:

Q. Mr. Pease, is it the position of the Secretary of Agriculture that the rates through a less distant port, a lower cost-port, should be maintained at a level high enough to provide a compensatory return to the carrier serving a more distant and higher cost port.

[fol. 338] Mr. Moerman: I object, Mr. Examiner. There has been no foundation laid for a question to this witness on the subject of cost.

He does not even know what the counsel is talking about.

Mr. Macleay: I think he does know what I am talking about.

Mr. Moerman: Then you will have to qualify him before he answers.

Mr. Macleay: It is a perfectly clear hypothetical question.

Mr. Moerman: I object on the ground the witness has not been qualified to answer the question.

Mr. Foley: I join in that. This witness is not an economist, Mr. Examiner.

Mr. Macleay: Mr. Examiner, I did not ask a question that takes any economist to answer. I asked what is the position of the Department of Agriculture, the Secretary of Agriculture, he is representing here today on that point.

The witness is perfectly qualified to say what the position of the department is and of the Secretary on that point. They sent him over here to talk about this matter.

Mr. Moerman: You show me his qualification on this record, and I will withdraw my objection.

Mr. Macleay: To state his understanding of the policy [fol. 339] of the Department of Agriculture?

Mr. Moerman: No, your statement of his qualification, that is all I am driving at.

Mr. Macleay: May I have the question read back, Mr. Examiner?

Exam. Boat: Read the question, please.

(The reporter read the question.)

By Mr. Macleay:

Q. Can you answer that question?

Mr. Shinn: Mr. Examiner, I would like to join in the objection to that question, as being without the scope of the man's direct defense, and as calling for conclusions.

Mr. Bongartz: Will you please speak up? I cannot hear you.

Mr. Shinn: I object to this question on the ground that it involves matters that are without the scope of his verified statement, and direct testimony in this proceeding.

Mr. Macleay: Well now, Mr. Examiner, as a matter of fact, on the first page of his statement, Mr. Pease states, the United States Department of Agriculture has a dual interest in this proceeding. One stems from the Acts of Congress cited above and involves the interest of the producer of agricultural commodities in equitable transporta-
[fol. 340] tion rates on his products, and an increased export of his products in foreign commerce.

Certainly that lays the proper foundation for propounding to this witness the question which I asked him. All I want him to tell me is whether the Secretary of Agriculture and the Department of Agriculture take the position that the rates to a less distant lower-cost port should be held at a level high enough to provide a compensatory return for service through a more distant higher-cost port, and whether he feels that that is in accord with the policy of the Department of Agriculture stemming from the Acts of Congress which he refers to.

Mr. Shinn: Mr. Examiner, this question goes to the compensatory nature of these rates.

Mr. Macleay: Mr. Examiner, I have not asked this witness one word about the compensatory nature of these rates.

Exam. Boat: One moment; have you finished?

Mr. Foley: Might I say that this question, if it is purely what is the position of the Secretary, I think that is completely irrelevant, because this verified statement is the position of the secretary.

If he is asking his opinion, then he has not qualified the man, because this is an economic question.

Exam. Boat: I think that is all this is, a statement of
[fol. 341] position of the Secretary.

I do not know that the witness is qualified to indicate—

Mr. Bongartz: Can't the witness, Mr. Examiner, be cross-examined as to the position of the Secretary?

He comes here representing the Secretary. Do you have to confine it to a statement that was prepared over at the Secretary's office?

Or wherever it was prepared; apparently from what Mr. Foley says, the witness is just the most incompetent, he is not qualified, and if that is the case, I move the statement be stricken.

Mr. Foley: The witness is a highly qualified rate man, but he is not an economist and he did not purport to be an economist.

Mr. Bongartz: He is coming here representing the Secretary of Agriculture.

If he takes a chance in representing the Secretary in producing a statement like this, he has to take a chance on cross-examination.

Mr. Reilly: Within the scope, Mr. Bongartz, covered by his verified statement, and not something without—

Mr. Macleay: He certainly got into policy in his verified statement. I submit, Mr. Examiner, we have every right, and we have an obligation, that this record may be [fol. 342] clear as to what the policy is, and the scope to which it goes.

Mr. Shinn: There were very able and well-informed witnesses from the Respondent railroads who testified here regarding the compensatory nature of these rates.

Mr. Macleay: Mr. Examiner, I have not asked a question having to do with the compensatory nature of the rates. I am asking the question on the Department of Agriculture and Secretary of Agriculture policy. Apparently counsel is most anxious that his witness not state the policy of the Secretary and of the Department. I am sure the witness can, if his counsel will let him.

Exam. Boat: Well, the witness may answer.

The Witness: What is the question now, please, Mr. Reporter?

(The question was read back.)

The Witness: Well, I do not know that I am qualified to answer a question on economics like that, but I would say this—

Mr. Foley: Mr. Examiner, if the witness does not know he is qualified, I certainly do not think he should answer. I object.

Exam. Boat: All right.

If he has no knowledge within that field, I think he has—[fol. 343] Mr. Macleay: He has not said he has no knowledge. I think he is very modest by saying he does not know whether or not he is qualified.

Mr. Foley: He very frankly said he was guessing, Mr. Examiner.

Exam. Boat: I think it is largely a matter of—

Mr. Bongartz: Don't you think, Mr. Witness, you are qualified to say what you were about to say, with the preface of the word "but"?

The Witness: I was going to say "But," leaving aside the question of economics, of which I know nothing, it would be our position, I believe, that the rates to the Ports, regardless of the cost of handling to or at the Ports in an area such as is comprised here, should be on an equalized basis for the benefit of the producers of agricultural commodities and the Department of Agriculture's own operation.

By Mr. Macleay:

Q. You believe, Mr. Pease, that is, does the Secretary of Agriculture believe that it is to the benefit of the producer of agricultural commodities for export that he be required to pay for exportation through a port that is close to him, and that is less expensive to operate through, the same amount that is required to provide service through a more distant port at a higher cost level?

A. I am not so—

Mr. Moerman: Just a minute. I object on the ground [fol. 344] of a hypothetical question.

Exam. Boat: That is a matter that can be argued later in the briefs.

Mr. Moerman: Yes, of course it is.

Mr. Macleay: Mr. Examiner, we are entitled to know what this witness means when he says that an interest of the Department of Agriculture is in equitable transportation rates on the products of the producer of agricultural commodities, and I asked him if he believes that it is an equitable rate if the producer is required to pay more than a reasonable rate, more than a fair rate, through one port

in order to support service through a higher-cost, more distant port.

Mr. Foley: Object. That is argumentative.

Exam. Boat: I think that is a question of law. That is as to what a reasonable rate is.

Mr. Macleay: He stated what is an equitable rate. I am asking him further if that is his idea of an equitable rate.

Exam. Boat: I understand his position on that to be an equitable rate is the same rate as at the other port.

Mr. Macleay: He has not said that, Mr. Examiner.

Mr. Moerman: He testified along those lines.

Mr. Reilly: The question is argumentative, too. It could be rephrased to ask if the producer should pay a lesser rate through a more distant port. It is a form of question [fol. 345] that is argumentative in form.

Mr. Colgren: Not only argumentative, Mr. Examiner, if I may interpose an additional objection: I think there is absolutely no groundwork, no basis upon which this witness can answer that. It has not been established in the first instance that a closer port is necessarily the most economical port from all standpoints, nor has it been established that a more distant port is the higher cost-port from all considerations.

On that basis I think this whole line of questioning is without merit and should not be further pursued.

Exam. Boat: I indicated of course I thought it was a matter to be argued in briefs, that is the place for it.

Mr. Macleay: Mr. Examiner, I submit we are entitled to a direct answer from this witness but, if the witness does not want to give it—and of course his counsel and all the other counsel are very anxious he not give it, apparently he is not going to give it.

Mr. Moerman: Mr. Examiner, I want that statement stricken from the record as a statement prejudicial to the side of the Respondents. It is frivolous and should be stricken.

Mr. Welsh: If the Examiner please, I would like the record to indicate Brooklyn raised no objection at this time, therefore the statement is not correct.

[fol. 346] Mr. Macleay: I will withdraw the statement so far as Brooklyn is concerned, and "I take off my hat" to Brooklyn. (Laughter)

Mr. Colgren: Mr. Examiner, I think we have now seen the fallacious nature of this whole line of questioning. It is apparent.

I, myself, as a spokesman I think for a group to a certain extent, would be willing to sit here and listen all day to Mr. Pease, and on brief, and in the examiner's understanding, I think, it would certainly be established that his answers would be nothing more than opinion based on no facts.

If you please, I think we should continue with this proceeding.

Mr. Walker: I would like to ask another question along another line.

Exam. Boat: Very well, Mr. Walker.

Recross examination.

By Mr. Walker:

Q. The Department thinks it is beneficial to the farmers and the railroads to have good service, does it not, Mr. Pease?

A. Yes, sir.

Q. I assume, after all is said and done, the Department's position is that the railroads have rates that are reasonable, depending on the service that is performed for the farmer.

Mr. Shinn: Mr. Examiner, I object to that question.

[fol. 347] Examiner Boat: Just a moment, let him finish here.

Have you finished, Mr. Walker?

Mr. Walker: Yes, sir.

Exam. Boat: The objection is overruled.

By Mr. Walker:

Q. Do you hesitate to answer that question?

A. I was trying to think what you asked me, Mr. Walker; I am sorry.

Exam. Boat: Do you wish the question read?
The Witness: Yes, please.

(The pending question was read by the reporter.)

The Witness: That is right.
Exam. Boat: Is that a question, Mr. Walker?
Mr. Walker: Yes. I assumed that was the position. He stated yes.
Exam. Boat: Are there further questions?
Mr. Macleay: I was not quite through.
Mr. Walker: Excuse me.
Mr. Macleay: That is quite all right.

By Mr. Macleay:

Q. Mr. Pease, on your exhibit A attached to your verified statement, there was some question raised yesterday about the shipping point of the 24,000 pounds of butter indicated as having moved through New York during that period.

Could you tell us where that was shipped from?

A. It was shipped from points in CFA territory.

[fol. 348] Q. But it was not shipped from storage into New York?

A. That is right. I was about to say it might have been transited in CFA from some point out west of the Official territory.

Q. But it was shipped from points in the CFA territory?

A. Yes, sir.

Exam. Boat: You spoke of 24,000 pounds.
It was 24 million pounds.
The Witness: 24 million pounds.
Mr. Macleay: 24,000 pounds is what I meant, Mr. Examiner.
The Witness: That is right.
Exam. Boat: Are there any further questions?
Mr. Macleay: No.

OFFERS IN EVIDENCE

Mr. Shinn: Mr. Examiner, I tender verified statement No. 34 for identification into evidence.

Exam. Boat: You are tendering that for the record now? That exhibit marked 34 is received in evidence.

(Exhibit No. 34, Witness Pease in support of Respondents was received in evidence.)

The Witness: Am I excused?

Exam. Boat: Yes.

(Witness excused.)

Exam. Boat: Is counsel for the General Services Administration here?

(No response.)

[fol. 349] He does not seem to be present.

Mr. Welsh, I think you are next.

Mr. Welsh: If the Examiner please, at this time I submit for the record—

Mr. Macleay: Mr. Examiner, may I interrupt just a moment? What is the disposition of this General Services Administration statement?

Exam. Boat: I think he expects to be present. I saw him here yesterday, and no doubt he will be. He must have misjudged the time we would reach this. I suggest he be given an opportunity—

Mr. Walker: He may be across the hall.

Mr. Macleay: Are we going to leave a space here for this number?

Exam. Boat: Yes, I would do that.

Mr. Welsh: If the Examiner please, at this time I submit for the record the testimony of D. J. Speert, on behalf of the Brooklyn Chamber of Commerce.

Mr. Speert was sworn on Monday and the request for cross-examination was withdrawn.

Exam. Boat: Very well. You can identify that statement as exhibit 36.

(Exhibit 36, Witness Speert in Support of Respondents was marked for identification.)

[fol. 350] Exam. Boat: Do you tender it in evidence?

Mr. Welsh: I tender it in evidence, yes, sir.

Exam. Boat: There being no objection, that exhibit is received in evidence.

(Exhibit No. 36, witness Speert in support of Respondents was received in evidence.)

Mr. Macleay: May we take a break, Mr. Examiner?

Exam. Boat: Yes, let us take a ten-minute recess.

(A brief recess was taken.)

Exam. Boat: Come to order, please; gentlemen.

JAMES K. COWLING was sworn and testified as follows:

Direct examination.

By Mr. Miller:

Q. Mr. Cowling, will you state your name and business address for the record?

A. My name is James K. Cowling, director of the Charter Routing Division, Transportation and Public Utilities Service, General Services Administration, 18th and F, Northwest, Washington, D.C.

Q. Mr. Cowling, have you prepared a revised statement for this proceeding?

A. Yes, sir.

Mr. Miller: Mr. Examiner, Mr. Cowling's statement which was originally filed under the due date was corrected and circulated to the parties by a letter under date of Feb-
[fol. 351] ruary 12, 1958, copies have been placed over on the press table for anyone who might want another copy.

Could this statement be given an identification number?

Exam. Boat: Is this the statement that you wish to supplant the one you originally explained?

Mr. Miller: Yes, we would like to withdraw the original statement and substitute this which is on the same subject.

Exam. Boat: I see.

That may be identified as exhibit 35.

(Exhibit No. 35, Witness Cowling in support of Respondants, was marked for identification.)

By Mr. Miller:

Q. Mr. Cowling, is your revised statement which has been identified as exhibit 35 true and correct to the best of your knowledge, information and belief?

A. That is right.

Mr. Miller: The witness is available for cross-examination, Mr. Examiner.

Cross examination.

By Mr. Macleay:

Q. Mr. Cowling, on page 3 of your statement you give certain figures, and you stated the study on which those figures are based includes only those import movements for which GSA is in a position to designate the Port of Importation.

[fol. 352] Does GSA actually designate the Port of Importation in every case?

A. No, sir.

Q. In what proportion of the traffic do you designate the Port of Importation?

A. I believe it would run between 60 and 70 per cent.

Q. Who designates the other?

A. The supplier.

Q. Now, with reference to the table which you have there, will you tell us what type of traffic came through Baltimore —what type of commodity?

A. Chrome ore, and manganese ore and ferro-chrome, I believe are the principal commodities.

Q. All ores?

A. Yes.

Q. Do you know to what points those moved in so-called differential territory?

A. Yes.

Q. Tell us, please.

A. May I refer to notes?

Q. Yes, sir.

Exam. Boat: You are speaking only of the Baltimore tonnage now, Mr. Macleay?

Mr. Macleay: That is all, yes.
The Witness: Manganese ore to Large, Pennsylvania.

[fol. 353] By Mr. Macleay:

Q. Would you tell us roughly where Large is located?
A. It is in the vicinity of Pittsburgh, I believe.
Q. The Pittsburgh area?
A. Yes.
Q. Thank you.
A. Chrome ore to Marrietta, Pennsylvania.
Chrome ore to Alloy, West Virginia.
Chrome ore to Niagara Falls, New York.
Ferro-manganese to New Haven, Indiana.
Ferro-chrome to New Haven, Indiana, and chrome ore to Point Pleasant, West Virginia—strike that last. Chrome ore to Point Pleasant would be at Norfolk, so strike that last.
Q. Do you consider Marrietta, Pennsylvania in official territory?
A. I believe it is, sir.

Mr. Bongartz: Is it east of Harrisburg?
The Witness: No, I believe it is within the Pittsburgh area, too.

By Mr. Macleay:

Q. What type of traffic moved through the Port of New York?
A. Manilla hemp. Fiber, chrome ore, rubber, graphite and bauxite ore.
Q. And through Philadelphia?
[fol 354] A. Manila hemp fiber, chrome ore, nickel oxide and bauxite ore.
Q. Why was—where was the bauxite ore destined?
A. Danville, Illinois.
Q. Did you route that traffic?
A. Yes, sir.

Exam. Boat: Speaking only of the latter now, the bauxite.
The Witness: Yes.

By Mr. Macleay:

Q. What is your position or the position of General Services Administration as to opposing or favoring the proposed reduced rates at issue here to and from Baltimore, Philadelphia, and Hampton Roads?

A. Would you repeat that?

Mr. Macleay: Will you read the question back, please?

(The reporter read the question.)

The Witness: The GSA favors the Port equalization proposed.

By Mr. Macleay:

Q. You mean that you are opposing reduced rates to Baltimore?

A. No, sir.

Q. That was my question.

Do you favor the proposed reduced rates to Baltimore?

A. Well, the rates are already reduced under Philadelphia, yes. We are for that. We advocate that.

[fol. 355] Q. And do you favor the proposed reduced rates to Hampton Roads?

Mr. Miller: I am not sure the witness and counsel are together on this.

The Witness: I think we are.

By Mr. Macleay:

Q. Well, does the witness realize that there are at issue in this proceeding tariffs which published reduced rates to Baltimore, to Philadelphia and to Hampton Roads, as well as tariffs proposing reduced rates to New York and Boston?

A. I don't believe I am entirely familiar with that, no, sir.

Q. Well, assuming, then, if you will, that there are here proposed reduced rates to and from Baltimore, Hampton Roads, and Philadelphia, do you favor such reductions?

Mr. Moerman: Mr. Examiner, I object. The statement is out of context. It is hypothetical. We have the facts

here. I think counsel can state to the witness what is the fact here that the New York carriers proposed reduced rates, that the carriers to the south proposed retaliatory reductions to maintain the differential, and that is the situation.

Mr. Macleay: I move we strike that word "retaliatory," Mr. Examiner.

Exam. Boat: I think we might strike that. The witness certainly should be apprized of the nature of the adjust-
[fol. 356] ment that spoke of, Mr. Macleay.

Mr. Macleay: I believe, Mr. Examiner, that I made it clear to the witness.

Mr. Moerman: You have not made it clear to me.

Mr. Macleay: Well, that I would not like to try to undertake.

Mr. Moerman: I do not blame you.

By Mr. Macleay:

Q. For your information, Mr. Cowling, there are at issue in this proceeding in addition to reduced rates proposed to New York and Boston, proposed reduced rates to Hampton Roads, Philadelphia and Baltimore.

Now, do you have any position as to those reductions?

I understand that you favor the reductions to New York and Boston.

Mr. Moerman: Object to the question again because it fails to state the issue clearly, and to apprize the witness that the proposed reduced rates from Baltimore and Philadelphia and Hampton Roads are for the purpose of maintaining the preexisting differential relationship.

Mr. Macleay: That is correct.

Exam. Boat: In the event that the rates filed by the Northern Tier ports should become effective.

Mr. Macleay: That is correct.

Mr. Moerman: Yes, sir.

Exam. Boat: I think that is the important thing which
[fol. 357] the witness was not informed of.

Mr. Macleay: That is correct.

The Witness: Well, the answer to that would be any reduction in rates would be beneficial to the taxpayer in

that it would reduce the cost of transportation for his own or sponsored material.

By Mr. Macleay:

Q. That is correct.

That being so and you being, I assume, interested in the welfare of the taxpayer and the shipper, is it your position that the rates to and from a less distant and lower cost port should be maintained at a high level, high enough to provide a compensatory return to the carriers serving a more distant and higher-cost port?

Mr. Miller: Mr. Examiner, I would like to object here.

That there is nothing in Mr. Cowling's statement going to the question of what is or what is not a compensatory rate or the level of the rates at all.

There is nothing in Mr. Macleay's question which states the level of those rates, the reasonableness of them, the compensatory nature of them or anything else.

I think the question is completely hypothetical and beyond the scope of the direct examination and is improper.

Mr. Macleay: It is not beyond the scope of the direct, Mr. Examiner.

On page 2 the witness has the following to say:

[fol. 358] "In the interest of economy it is GSA's duty to seek the lowest reasonable basis of rates for transportation in the furtherance of its shipper or consumer interests."

Now, I asked him if, in view of that duty of GSA, he is here to advocate that the rates to a less distant lower-cost port be held at a level high enough to pay for service through a more distant higher-cost port.

Mr. Moerman: That is argumentative.

Mr. Macleay: Let me finish my question.

By Mr. Macleay:

Q. Do you consider that that is in the interest of seeking the lowest reasonable basis of rates for transportation?

Mr. Colgren: Mr. Examiner, we reviewed this with the prior witness, and I think that there is accord that it has not been established of record that the nearest port is nec-

essarily the lesser-cost port from a transportation standpoint.

I think, for that reason, the question is entirely hypothetical and would add nothing to the record.

Mr. Macleay: It adds a great deal, Mr. Examiner, in determining just the position and the interest of this agency for which Mr. Cowling speaks. And I submit that in view of his direct testimony as to the duty of GSA to seek the [fol. 359] lowest reasonable basis of rates, that it is a perfectly proper question to test what he means by seeking the lowest reasonable basis of rates.

Mr. Colgren: I have no quarrel with that statement as such, but he is asking the witness to answer a question on an assumption which is not based on any fact.

Mr. Macleay: Well, now, Mr. Examiner, I submit that there is plenty of factual material which has been distributed in this proceeding, and with which counsel is familiar, which lays all the basis that is necessary for that question, but even in the absence of such material, I submit that it is purely a proper hypothetical question to examine into what the witness means by this statement.

Examiner Boat: That question is in the nature of one asked of Mr. Pease.

Mr. Macleay: But that was on a different sort of direct testimony, Mr. Examiner. We did not have a statement from Mr. Pease that he sought the lowest reasonable basis of rates. We do have from this witness.

Mr. Miller: Mr. Examiner, I would like to point out that Mr. Macleay is asking a hypothetical question which is not consistent with the carrier's own proposals. Are they taking the position that their proposed reduced rates for the Southern ports, that is, Baltimore, Philadelphia and so forth, unreasonable and non-compensatory?

[fol. 3 Mr. Macleay: No. We take the position—or the carriers, ume, take the position that they are reasonable and compensatory, while those proposed to the higher tier of ports are not.

Mr. Colgren: There, Mr. Examiner, is exactly what I am talking about.

He assumes so. Now that is purely an assumption unless it is established as a fact of record.

Now we have, as he indicates, quite a bit of testimony in this record which has not been reviewed through cross-examination.

Exam. Boat: I think it is idle, unless we establish—after all this record is made—some of these basic facts, what can be argued from those facts.

Therefore, the basis of my previous ruling was that it was a matter of argument on brief when we get to that stage.

Mr. Macleay: Mr. Examiner, I submit that we have a right to know what is the attitude of GSA toward that situation if it is established on this record, and I think that the witness is perfectly competent to talk about it. He goes on here in his testimony to say that the interest of GSA in maintaining costs of transportation at the lowest practicable level and I asked him if by that he means that it is in his interest, the interest of GSA, to hold the rates at a low-cost [fol. 361] port to a level high enough to pay for service through a high-cost port, a perfectly simple question.

It does not require anything except a perfectly simple answer.

Mr. Moerman: If he knows.

Mr. Colgren: Mr. Examiner, I do not have any objection to his answering the question if it is put as a hypothetical question.

Mr. Macleay: It is put as a hypothetical question.

Exam. Boat: With that understanding he may answer.

Mr. Miller: I object to the question and to the witness answering a hypothetical question when there is no—

Exam. Boat: It does not add anything to the sum total of the record here, I do not think.

Mr. Miller: I would like to point out this is one of those things of when are you going to stop beating your wife, yes, sir, and it is completely unjustified.

Mr. Macleay: It is complete.

Mr. Miller: On what factual basis?

Mr. Macleay: Do we have a ruling on that?

Exam. Boat: As I see it, the question is substantially the same as you were asking of witness Pease, in other words, there is not a great difference, it leads to the same thing and the ruling is the same.

Mr. Macleay: All right.

[fol. 362] By Mr. Macleay:

Q. Then, Mr. Witness, if you will refer, please, to page 2 of your revised testimony, and explain what you mean in costs of transportation at the lowest practicable level.

Will you please relate that statement to export-import rates and explain what you mean?

A. Well, we would like to obtain transportation of the taxpayer's material at the lowest practicable cost consistent with the service to be performed and delivery requirements.

Q. Do I take it, then, that you mean that you should obtain the benefits of all possible economies in transportation?

A. We try to do that, sir, yes, sir.

Mr. Macleay: That is all.

Mr. Walker: I have one question.

Exam. Boat: Mr. Walker.

Cross examination.

By Mr. Walker:

Q. On page 6, Mr. Cowling, you say that GSA favors the Port equalization proposals of the Respondent railroads for the reason that equalization would enable GSA to route traffic equitably as between the various North Atlantic ports on the basis of efficiency and service.

Is that the sole reason that you are asking for equalization? That you may equitably distribute this traffic between the various north Atlantic ports?

[fol. 363] A. That is one of our statutory responsibilities, as I understand it.

Q. Is that the reason you favor equalization?

A. Well, it might influence—where the rates through the several ports are equal, our selection of stockpile sites might be influenced.

Q. Might be influenced?

A. Might be influenced, yes.

Q. Under the present adjustments, you route more traffic from differential territory to New York than you do to Hampton Roads, do you not?

A. Well, in the reverse direction, yes.

Q. Is that correct?

A. I think that is a part of my statement.

Q. Do you think that is an equitable distribution of the traffic today?

A. No, sir, it is not today.

Mr. Walker: All right.

Thank you.

Mr. Scully: I just have one or two questions of Mr. Cowling.

Cross examination.

By Mr. Scully:

Q. Mr. Cowling, referring to page 3 of your statement, in the first paragraph where it says "This study includes only those import movements for which GSA is in a position [fol. 364] to designate the port of importation."

Would you tell me, sir, whether GSA is in a position to control the movement through Portland, Maine?

A. Not entirely, sir, because the inbound ocean carriers are sometimes reluctant to call at the smaller ports, because of the absence of tonnage that they might lift at such ports.

So, if there is no direct sailing to Portland, Maine, or it is not designated as a port of call, the berth liners particularly we might be precluded from using Portland.

Q. But if there was a direct sailing, you could control the ports, is that correct?

A. In some instances we could.

Q. Do you know whether or not GSA imported anything through Portland during this period?

A. I believe not, sir.

Exam. Boat: Are there any further questions?

Mr. Bongartz: I have a few questions.

Cross examination.

By Mr. Bongartz:

Q. Mr. Cowling, would your interest in equalization of rates extend to equalization at the present level of the rates to New York?

A. How do you mean that?

Q. You understand, do you not, that the rates to and from New York on export-import traffic between New York and [fol. 365] differential territory are presently higher than at the other ports.

My question to you is, does your interest in equalization extend or would it extend to equalization at the New York level of rates by increasing the rates to Philadelphia, Baltimore, and Hampton Roads?

Mr. Moerman: That is objectionable on the ground it is speculative. We have here precise sets of tariffs which the Commission has suspended.

I think the question ought to be stricken because it has no relevancy to the issue in this case.

Mr. Bongartz: I submit, Mr. Examiner, we have heard a lot about the interest of General Services in equalization. I think it is perfectly proper to find out just how far that interest extends.

Mr. Moerman: Mr. Examiner, if and when there was a set of tariffs or proposals to raise the rates to effect equalization, that might be proper.

We do not have that situation here. I do not think this witness should be queried on something that is not before us.

Mr. Miller: Yes, Mr. Examiner, I join in the objection, or I should make it myself as the principal counsel, for the witness.

He is not required or should not be required to answer [fol. 366] questions assuming a set of facts that are absolutely contrary to the issues of this case.

By Mr. Bongartz:

Q. Well, Mr. Cowling, do I understand that your interest in this proceeding is one of equalization of rates?

A. I think that is stated in our testimony of GSA.

Q. But at the same time you want equalization, you only want equalization downwards, is that right?

A. Well, again I think that is—

Q. You are interested only in the lowest basis of rates that you can get, isn't that the fact?

A. Yes, sir.

Mr. Bongartz: Thank you.

Mr. Keenan: Mr. Examiner, could I inquire of the witness?

Exam. Boat: Yes.

Cross examination.

By Mr. Keenan:

Q. Mr. Cowling, your direct testimony was that in 1955, GSA controlled import tonnage through the Atlantic ports to differential territory, amounting to virtually nothing through Boston and 294,000 odd tons through Baltimore and in 1956 339 tons through Boston and 195,thousand odd, 196,000 odd through Baltimore.

Could you tell me whether, in 1947, substantially the same sort of ratio obtained with regard to the Ports of Boston and Baltimore?

[fol. 367] A. I believe it does, yes, sir.

Mr. Keenan: Thank you, sir.

Mr. Welsh: I have just the one question, if I may.

By Mr. Welsh:

Q. Mr. Cowling, on page 6 of your verified statement, you make the assertion that the equalization of import and export rates between all North Atlantic ports would simplify the choice of the North Atlantic Port to the extent that there would be the same costs of movement through the port.

Then you go on to say, as I understand it, that this would enable you to select the most efficient port operation to meet your needs.

Is that the intent of your statement?

A. Yes, sir.

Q. Do you think that would improve the efficiency of your operation?

A. Yes, sir.

Mr. Welsh: Thank you.

OFFERS IN EVIDENCE

Exam. Boat: Do you offer the exhibit, Mr. Miller?

Mr. Miller: Yes, sir. I offer exhibit 35 in evidence.

Exam. Boat: That exhibit will be received in evidence.

(Exhibit 35 is received into evidence.)

[fol. 368] Examiner Boat: You are excused.

(Witness excused.)

Exam. Boat: At this point we already have received in evidence at a previous point in the record the statement of L. H. Dalzell and we will assign exhibit 37 to that statement and it will be received in evidence.

(Exhibit 37, Witness Dalzell in support of Respondents is received in evidence.)

Exam. Boat: The Commission has received a communication from Senator Saltonstall who wishes to state his position, as I understand it, in this case and we have been informed that he has been delayed. I do not know what time he is expected to arrive here.

Mr. Bongartz: Someone said he was in the room a moment ago.

Exam. Boat: Is Mr. Saltonstall present?

Mr. Foley: The Senator has decided he will reserve comment until oral argument.

Exam. Boat: I see.

Very well.

Mr. Curry is on the floor.

Mr. Curry: Mr. Examiner, I have a statement, a verified statement of Mr. Frank W. Dunham, Jr., General Manager of the Albany Port District Commission.

I understand that the request for cross examination was [fol. 369] withdrawn, and I would, therefore, like to offer the statement.

Exam. Boat: Excuse me. I appreciate that, Mr. Curry, but there are some others that we would like to take up before, which no cross examination was requested. If we can do that, it will not take long.

Mr. Curry: I misunderstood. I would be very glad to wait.

Exam. Boat: The statement of Mr. Springrose—is counsel present who spoke to me about Mr. Springrose's statement?

Mr. Colgren: Mr. Examiner, that was submitted directly as I understand it to the Commission by Mr. Springrose.

Mr. Grimes: I represent Cargill, Incorporated, and Cargo Carriers, Incorporated.

I present for identification a verified counterpart of a statement filed by Mr. B. A. Springrose, 7 June, 1957, with the Commission, on behalf of Cargill, Inc., and Cargo Carriers, Inc.

Exam. Boat: That may be identified as exhibit 38.

(Exhibit 38, witness Springrose in support of Respondents was marked for identification.)

Mr. Welsh: Was that distributed?

Mr. Grimes: It has not been distributed as far as I know.

Mr. Colgren: It has been.

[fol. 370] Mr. Grimes: I am sorry.

Mr. Welsh: Should the record show that?

Mr. Grimes: Yes, it should show that.

Mr Macleay: What number is that?

Exam. Boat: That is the verified statement?

Mr. Grimes: Yes.

Exam. Boat: No. 38 is the number we assign.

No cross-examination is requested.

Mr. Grimes: No cross-examination is requested.

Exam. Boat: Do you tender the exhibit in evidence, Mr. Grimes?

Mr. Grimes: I offer the exhibit in evidence.

Exam. Boat: It is received as exhibit 38.

(Exhibit No. 38 is received into evidence.)

Exam. Boat: Is Mr. Chartrand present?

Mr. Chartrand: Mr. Examiner, I would like to have identified at this time the verified statement of J. S. Chartrand, manager of the transportation department of the Board of Trade of the City of Chicago.

Exam. Boat: It will be identified as exhibit 39.

(Exhibit 39, Witness Chartrand in support of Respondents is marked for identification.)

Mr. Chartrand: Also the verified statement of Mr. R. L. Beal, General traffic manager, Farmers Grain Dealers Association of Iowa.

[fol. 371] Exam. Boat: That will be identified as exhibit 40.

(Exhibit no. 40 witness Beal in support of Respondents is marked for identification.)

Mr. Chartrand: Also the verified statement of Mr. V. Conley, manager of the Transportation Department of Norris Grain Company.

Exam. Boat: That will be identified as Exhibit 41.

(Exhibit No. 41 witness Conley in support of respondents is marked for identification.)

Mr. Chartrand: Also the verified statement of Mr. W. P. Conrad, Jr., traffic manager, Rice Grain Corporation.

Exam. Boat: Identified as 42.

(Exhibit No. 42 witness Conrad in support of respondents is marked for identification.)

Mr. Chartrand: And last the verified statement of Mr. T. J. Crowe, vice president and traffic manager, Illinois Grain Corporation.

Exam. Boat: That is identified as exhibit 43.

(Exhibit 43, Witness Crowe, in support of respondents is marked for identification.)

Mr. Chartrand: I would like to offer in evidence exhibits 39 to 43, inclusive.

Exam. Boat: If there is no objection, exhibits 39 to 43 are received in evidence.

(Exhibits 39 to 43 are received in evidence.)

[fol. 372] Exam. Boat: Now, Mr. Curry, I think we have reached the point where you can continue.

I think your statement is on the record, except for the conclusion, perhaps, you were making.

Mr. Curry: I would like to pass up the verified statement of Mr. Frank W. Dunham, Jr., of the Albany Port District Commission.

I would like to offer that into evidence.

Exam. Boat: That may be identified as 44.

(Exhibit 44, Dunham, Jr., in support of respondents; was marked for identification.)

Exam. Boat: There being no objection, it is received in evidence.

(Exhibit 44 was received into evidence.)

Exam. Boat: I think there is a point where Mr. Scully's witness—is he here?

Mr. Scully: Yes.

Mr. Foley: Might I at this point say, Mr. Examiner, Mr. Hefron, of the New England Council, has a statement which has been distributed and which he would like to have marked for identification and offer at this time if it is appropriate.

Mr. Langdon: Is he here for cross questioning?

Mr. Foley: He is here for cross questioning.

Mr. Colgren: What was his name?

[fol. 373] Mr. Foley: Edward L. Hefron.

Exam. Boat: I do not seem to have a copy.

Mr. Kraemer: Mr. Examiner, this was passed up this morning.

Exam. Boat: I think I have a copy of that.

Has counsel for the Southern Tier ports seen this statement of Mr. Hefron?

Mr. Langdon: We want to ask him some questions.

Exam. Boat: Very well. Will you take the stand, please?

EDWARD L. HEFRON was sworn as a witness and testified as follows:

Mr. Foley: Mr. Hefron is sworn. Has his statement been marked?

Exam. Boat: I do not believe it has been marked yet, but we will mark it exhibit 45.

(Exhibit 45, Witness Hefron in support of Respondents is marked for identification.)

Direct examination.

By Mr. Foley:

Q. Mr. Hefron, will you state your name and address for the record?

A. My name is Edward L. Hefron, 7 Water Street, Boston, Massachusetts.

Q. Was the statement on behalf of New England Council which has been marked for identification exhibit 45, pre- [fol. 374] pared by you?

A. Yes, sir.

Q. Is it true and correct to the best of your knowledge and belief?

A. Yes, sir.

Mr. Foley: You may inquire.

Cross examination.

By Mr. Scully:

Q. Mr. Hefron, the New England Council includes representations from all sections of New England?

A. Yes, sir.

Q. And that would include industries in Maine and New Hampshire?

A. Yes, sir.

Q. What authority was given you to appear on behalf of the New England Council in this proceeding?

A. That comes within the scope of my job. I discussed the matter with our executive vice president who, as I

understand it, consulted with the executive committee, and they approved the submission of the statement.

Q. Do you know whether they consulted with any of the industries in Maine?

A. I do not know that they particularly went to the Maine people, but to the best of my understanding there is Maine representation on the executive committee.

Q. I notice that there is no reference to the Port of Port-
[fol. 375] land in your statement.

Do I understand from that that the New England Council is interested only in the Port of Boston?

A. I would not say that they are interested only in the Port of Boston, but for the purpose of this proceeding I would like to say their primary interest is the Port of Boston. I think that is the key to the situation.

Q. Do you know of any specific authority that they had to speak for people or industries of Maine in this matter?

A. By "they," you mean the New England Council?

Q. Yes.

A. Well as the statement says, it is composed of 3200 industries and individuals, professional men and so on, coming from all parts of New England which, of course, embraces Maine.

Q. Are there members of the Executive Council from Maine?

A. I do not doubt for a minute but what there are Maine men on the Executive Committee. I could not tell you their names or identify them but that would be in line with the policy of the organization. It would have all sections represented.

By Mr. Langdon:

Q. Mr. Hefron, who is the executive vice president of your council to whom you referred and from whom you obtained authority to appear in this proceeding? Is he Garner Caverly?

[fol. 376] A. Yes.

Q. Mr. Hefron are you familiar with a report of the Advisory council to the Port of Boston Commission submitted to the Governor of Massachusetts and signed by

your superior officer, at least apparently signed by your superior officer Gardner Caverly?

A. Yes sir.

Q. Are you familiar with the report?

A. I know there is such a report. I had not read it personally because I had not been on the job long enough.

Q. You know there is such a report?

A. Oh yes.

Q. You have not read it?

A. No, sir.

By Mr. Bongartz:

Q. Just the further question for clarification, sir, how long have you been on this job?

A. Just about since November.

Q. November?

A. Yes.

Q. Don't you know these reports were made in December?

A. That may be so but I still have not seen them.

Q. You have not caught up with them yet?

A. Beg pardon?

Q. You have not caught up with them yet?

A. I have been pretty busy. That is one of the things I [fol.377] intend to do but have not done yet.

By Mr. Langdon:

Q. Do you know there was a supplementary report of the same advisory council to the Boston Port Commission dated December 1, 1957?

A. I have seen reference to it, yes, sir.

Q. You have not read that?

A. No, sir.

Q. What did you do before you came to work for the New England Council?

A. Well, I am sure—well, immediately preceding that I was in the Mid-east for about 8 years, engaged in the construction and operation of the Saudi-Government railroad.

Q. Prior to that?

A. I practiced law in Washington.

Q. So that your representation of the New England Council in this proceeding is based on an employment which began you say in November of last year?

A. About November, I guess it was, yes.

Q. And it includes, I gather, no prior New England transportation experience?

A. Oh, yes, I went to work for the Boston and Maine Railroad as a kid out of school.

Q. When was that?

A. That was about 1910.

Q. Then what did you do?

A. I came to Washington during the first world war.

[fol. 378] Q. In what capacity?

A. In the office of the Quartermaster General, transportation division.

Q. Were you in the army?

A. No, I was a civilian.

Q. After that what did you do?

A. I went back to Boston and was with the Boston Chamber of Commerce for about 12 years as assistant to Mr. William H. Day.

Q. Then what happened?

A. Then I went into the trucking business, unfortunately.

Q. Trucking business?

A. Yes, sir.

Q. Then after that?

A. I guess I practiced a little more law.

Q. When was that date when you went back to the practice of law, approximately?

A. I would say about 1938.

Q. 1938?

A. Yes, sir.

Mr. Langdon: Apparently this witness is not able to identify or vindicate this report. He knows, however, of the existence of the report together with its supplement.

I was wondering whether there was going to be any question with counsel on the other side as to the authenticity of this report with the understanding, of course, that [fol. 379] if it is being incorrectly copied or in any other

way incorrectly reproduced, we will of course accept any changes that are necessary for the record.

The Witness: May I suggest I have not mentioned the report in my statement?

Mr. Foley: Mr. Examiner, I do not know whether anything is being offered or what you are doing at the moment except making a speech.

Mr. Langdon: No, I am just finding out how technical you want to be about this, that is all.

Mr. Foley: You have not offered anything, there is nothing for me to object to.

Mr. Langdon: I am asking whether there is going to be a technical objection.

Mr. Foley: There is going to be an objection of substance.

The objection is that the report is completely irrelevant; incidentally, you brought it in as I understand it, in connection with Mr. Day originally. I can tell you that I have since—or Mr. Lowenstein, my associate, has since talked to Mr. Day, and Mr. Day did not participate in either report. He did not sign either report, and he did not see the report until after they were published.

Whether Mr. Caverly did or did not, I do not know, but I certainly am going to object to the report. It is violative [fol. 380] of all rules of evidence, and you have not identified anybody with it.

Mr. Keenan: If counsel desires the advice, and he appears to, Mr. Examiner, I can certainly advise in behalf of the parties I represent I should like the document to be authenticated.

Mr. Langdon: Well, then, Mr. Examiner, we are going to ask for some subpoenas. After the recess at lunch I will file a request for the subpoenas.

Mr. Keenan: When the request is filed, we will comment appropriately, Mr. Examiner.

Exam. Boat: I did not hear that.

Mr. Keenan: When the request is filed, we will file comment appropriately. It does not appear to be so at this time.

Mr. Langdon: We will depend on you, I am sure.

Mr. Keenan: Can I inquire of counsel whether we will be notified when such request is filed, whether we will be served with copies.

Mr. Langdon: We will do it when you are in the room. It will be in the afternoon.

Mr. Keenan: O.K., fine.

Mr. Hanifin: May I inquire of the witness?

Exam. Boat: Yes.

Cross examination.

[fol. 381] By Mr. Hanifin:

Q. Mr. Hefron, I noticed in your testimony in one sentence, page 2, stating—"Its highly efficient and modern piers and other facilities lie idle, for the most part." Is that the characterization of the facilities at Boston?

A. Yes, sir.

Q. Is that your opinion, sir, the facilities at Boston?

A. Well, I do not think they are as modern as they might be, but I do consider that they are efficient. I have not heard any criticism of them.

Q. Do you include in that characterization the Castle Island Terminal at Boston?

A. The entire Port situation, yes, sir.

Mr. Langdon: No further questions.

Exam. Boat: Are there any further questions? That seems to be all.

Mr. Bongartz: Could you defer excusing the witness for a moment, please?

Exam. Boat: Surely.

Mr. Bongartz: No questions.

Exam. Boat: Very well, sir, you are excused.

(Witness excused.)

Exam. Boat: That exhibit 45 will be received into evidence.

(Exhibit 45, Witness Hefron was received in evidence.)

[fol. 382] Exam. Boat: Mr. Scully, do you wish to tender the next matter on the agenda?

Mr. Scully: Yes, sir.

Mr. Examiner, I would like to offer the verified statement of R. Clifford Merrow of the position of the Maine Central Railroad Company.

Exam. Boat: That is the original you have there?

Mr. Scully: Yes, sir.

Exam. Boat: With the verification attached?

Mr. Scully: Yes, sir.

I have a second statement of Mr. Merrow entitled "Verified Statement of R. Clifford Merror, Freight Traffic Manager, Maine Central Railroad Company."

Mr. Merrow is present and cross-examination has been waived by Mr. Foley and I understand that the New York Lines are not interested.

However, the attorney for the GSA requested Mr. Merrow's appearance.

Exam. Boat: Is Mr. Merrow present here?

Mr. Welsh: If the Examiner please, may I ask counsel—have these documents been distributed?

Mr. Scully: Yes, sir.

Mr. Welsh: I did not receive them.

Exam. Boat: I was going to say I did not receive a copy of the second statement of Mr. Merrow, for that one of [fol. 383] Mr. Langlois.

We will identify Mr. Merrow's statements, I think we can identify them as one exhibit, No. 46.

(Exhibit No. 46, Witness Merrow in support of Respondents was marked for identification.)

Mr. Bongartz: 46-A and 46-B.

Exam. Boat: We will call them 46.

Mr. Bongartz: We may want to refer to them on brief. That will mean two statements with the same number.

Exam. Boat: Perhaps that would be best, make it 46-A and 46-B.

(Exhibit No. 46-A and 46-B witness Merrow in support of respondents marked for identification.)

Exam. Boat: Do you have a further statement?

Mr. Scully: Mr. Merrow is here; if counsel for GSA wants to cross examine.

Exam Boat: He does not seem to be present.
Proceed.

OFFER IN EVIDENCE

Mr. Scully: If not, I would like to offer into evidence the statement of Mr. Merrow.

Exam. Boat: That will be received as exhibit 46-A and 46-B.

(Exhibits 46-A and 46-B witness Merrow were received into evidence.)

[fol. 384] Mr. Hillsinger: I will cross examine in Mr. Miller's absence.

R. CLIFFORD MERROW was sworn as a witness and testified as follows:

Exam. Boat: We are ready, Mr. Hillsinger.

Cross examination.

By Mr. Hillsinger:

Q. Mr. Merrow, on page five of your testimony, of your verified statement, rather, the second paragraph, you start a sentence, "However, the fact that the CFA traffic has declined is an indication that the import differential is not a factor of sufficient importance to"—

The next paragraph—no, going to page 8 of your statement, the second paragraph of the page, you say "The facts clearly show that in spite of the import differential, Portland has not been able to attract any import commodities other than china clay and woodpulp, which are used in local industry."

Could you clarify that for us?

A. I think on page 5, while the differential as stated there is not sufficient or of sufficient importance to maintain or increase, it means we are holding our own, possibly, but if we did not have the differential we certainly would lose it all.

Q. In your first statement I referred to, the first paragraph, that the import differential is not a factor, would you be incorrect, is that true?

[fol. 385] A. That is the way I am trying to explain it now where I have had that marked that way. It should not have been in just that way, because it is a factor.

Q. It is a factor, but not a sufficient one, eh?

A. That is right.

Q. On page 7 of your testimony, paragraph—the fourth paragraph from the top of the page, "Portland is at a geographical disadvantage in handling traffic to CFA Territory and needs the import differential if it is to compete successfully with other ports."

We should like to have you reconcile that, if you would, with your statement on page 9, the second sentence, the "import-differential has not operated to give Portland any unreasonable advantages competing with other North Atlantic Ports."

A. We come right back to the same thing again, that we do not get too much import tonnage there now, but if we did not have the differential we probably would not get any.

Q. In other words, you have the differential, it is a good thing, and while it is not doing you any good now, you hope some day it might.

A. We hope so.

Q. But it is not doing any good right now?

A. Oh, yes, it is.

Q. You do not have any imports?

A. It is, yes, we handle woodpulp and china clay and a [fol. 386] good part of those imports are used by our own mills. If we did not have the differential to take part of that tonnage to CFA our own mills would be paying more money for their china clay and woodpulp because it would come through the other ports.

Portland helps in that way, to take care of our own mills.

Q. Right in the preceding sentence, though, you say Portland has not been able to attract any important commodities other than the china clay and woodpulp?

A. That is right, that is all we have.

Q. Is not that in conflict with what you just stated that you do have a benefit?

A. Pardon?

Q. Isn't that in conflict with what you just said that you do have a benefit, because here you say you have not been able to attract any import commodities?

A. Where are you reading now?

Q. Page 8.

A. Where it says, "Portland has not been able to attract any import commodities other than china clay and woodpulp."

Q. Yes, sir.

A. That is right.

Q. And at page 4 we just agreed that you said the differential was not a factor in woodpulp, so we should delete the woodpulp and it goes back to china clay, does it not?

[fol. 387] A. Well, it is a factor.

As I stated before, that should have been corrected.

It is a factor, and considerable—

Q. By "considerable", you mean woodpulp, not the CFA imports? Is woodpulp a CFA import?

A. Yes, a good portion of it is.

Q. A good portion?

A. Yes.

Q. What is your position now in regard to equalization of rates or removal of the differential for Boston. Would you object to it?

A. Our statement has been made that we want to maintain a status quo. We have the differential on the imports. We do not on the exports.

Q. How do you feel about Boston? Do you feel that the differentials should be removed from Boston or not?

A. Well, I would rather not say anything about Boston. I am not here to talk about Boston.

Q. Wouldn't the same reasons apply to Portland as they do to Boston, substantially?

A. Well, possibly.

Exam. Boat: Are there any further questions? You are excused, Mr. Merrow?

(Witness excused.)

Mr. Scully: Has Mr. Merrow's statement been offered [fol. 388] in evidence?

Exam. Boat: We have received it.

Mr. Scully: I would like to offer now into evidence the verified statement from A. Edward Langlois, Jr., on behalf of the Maine Port Authority in support of Maintaining the Import Differential at the Port of Maine.

Exam. Boat: It will be identified as exhibit 47.

(Exhibit 47, Witness Langlois in support of Respondents was identified.)

Exam. Boat: Do you offer it in evidence?

Mr. Scully: Yes, sir.

Exam. Boat: That will be received in evidence.

(Exhibit 47, Witness Langlois was received in evidence.)

Mr. Foley: Mr. Examiner, so there will be no confusion on the record, when testimony is offered, and the exhibits go in, the testimony will be received as one unit.

Exam. Boat: That is right.

That seems to conclude the respondents' side.

Mr. Bongartz: What about these statements, Mr. Foley issued this morning?

Exam. Boat: Oh, that is right.

You mentioned these, Mr. Foley. Are these people present now?

Mr. Foley: Mr. Burke, or somebody representing the [fol. 389] Department of Commerce will be here right after lunch, because that is when I understood he would be called. Does somebody want Mr. Burke or somebody from the Department of Commerce?

Exam. Boat: Any cross examination requested of this witness?

Mr. Langdon: Can we defer these until after lunch. These were distributed this morning and we have not had a chance to look at them.

Exam. Boat: I thought we would have that opportunity earlier this morning.

I did not think we would be so far along.

Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Langdon, would you like to proceed now?

Mr. Langdon: Yes, sir. I would ask what your pleasure is.

Mr. Mollman is our first witness and I call him now.

I should like, however, to have the understanding that Mr. Heywood can be tendered as a witness this afternoon because, unfortunately, he has to leave. We can start with Mr. Heywood now, or we can run him around Mr. Mollman if the cross examination is taking too long.

Exam. Boat: I think perhaps we should start with Mr. Mollman. We can let him stand aside if you will, and we [fol. 390] can reach Mr. Heywood after lunch.

Mr. Colgren: I am a little perturbed about that. Won't Mr. Heywood be here tomorrow?

Mr. Bongartz: No.

Mr. Colgren: Mr. Examiner, I was just handed two new exhibit which will, apparently be offered by witness Heywood today which are a restatement of previous exhibits but on an entirely different basis, out-of-pocket cost as against the fully distributed.

I have not had an opportunity to review them nor to confer with my cost people as to the—

Exam. Boat: Let's have a little quiet, please.

Mr. Colgren: I am pointing out to the Examiner that this morning I have been handed two additional exhibits by Mr. Heywood, which restates his costs now on an out-of-pocket basis, whereas prior testimony and back-up material supplied to the respondent railroads was on a fully-distributed basis.

I have had no opportunity to look at the proposed exhibits on the new basis, nor to confer with my cost people as to their effect and possible criticisms of it.

I had in mind asking that this cross-examination be deferred until tomorrow morning so that we could complete the whole thing. I think we will be prepared at that time to complete it. I can, of course, start with Mr. Heywood this afternoon, but it will be without the benefit of any [fol. 391] consideration of the two new exhibits.

Mr. Bongartz: Well, unfortunately, Mr. Heywood is in-

terested in a tax case, and the adjourned hearing is going on tomorrow at New York.

It will require his presence the rest of the week. I have no objection, of course, to your deferring all or part of Mr. Heywood's cross examination to a later date.

Mr. Colgren: Well, I do not want to prolong the conduct of the proceeding.

Exam. Boat: Do you want this on the record?

Mr. Colgren: No, not necessarily.

Exam. Boat: Off the record.

(Discussion was off the record.)

Exam. Boat: On the record.

We will recess until 1:45 p.m.

(At 12:15 p.m. a recess was taken until 1:45 p.m.)

[fol. 392] AFTERNOON SESSION

1:45 p.m.

Exam. Boat: I think we can proceed.

Mr. Walker: Mr. Examiner I would like to bring up a question of procedure at this time. It seems we have a non-conformance with us here.

Exam. Boat: Do you want it on the record, Mr. Walker?

Mr. Walker: Yes, sir.

It was understood, at least the Examiner asked all parties in calling their witnesses for cross examination that they would indicate some evidence of the time of cross-examining.

The General Services Administration has requested the appearance of 23 witnesses and we have no idea whether it is going to take 10 minutes per witness or 30 minutes. It has reached the point now where it is creating some inconvenience, because I have two witnesses that are pretty busy and I would like to have some indication of when they will be reached and I can't with 23 witnesses, that has been requested to be cross examined by GSA. It does seem to me that we ought to have at least some indication of the time that he is going to cross-examine these witnesses.

Exam. Boat: Is Mr. Miller present?

He is not present.

Mr. Costello: He is over in this next hearing room.

Mr. Macleay: The other hearing is adjourned, Mr. [fol. 393] Examiner.

Mr. Walker: But for the convenience of everybody, it looks like to me we ought to have, if we can, some indication of the time he is going to consume in cross examination of these 23 witnesses, because it may be 2 hours, it may be two days, we do not know.

Exam. Boat: I suggest you contact him.

Mr. Walker: I cannot get anything out of him. I just make that for the record, hoping he will cooperate with us. Everybody else has cooperated with us.

Exam. Boat: Yes.

Mr. Macleay: I will make the same request as soon as Mr. Miller returns to the room, if he does.

Exam. Boat: Very well, if anybody can get hold of him.

Mr. Foley: I have a couple of preliminary matters.

I could put on now, if you would receive it, Mr. Rigney, Deputy Commissioner of the State Department of Commerce who has verified statement that has been circulated among the adverse parties and also a representative of the Associated Industries of Massachusetts, Mr. Collins.

He will testify in support of these statements that have been circulated, if that is agreeable. Is this the time? Is this appropriate?

Exam. Boat: Yes. I have these two that you handed me this morning. Is that Mr. Burch, and who is the other?

Mr. Foley: Neither, sir, Mr. Burke nor Mr. Hunt could [fol. 394] be here, but their testimony can be supported I am told by Deputy Commissioner Rigney for Mr. Burke and Mr. Bertram Collins for Mr. Hunt.

Both gentlemen are present and are ready to testify in support of this statement.

Exam. Boat: Mr. Colgren has not come in. I do not know whether it is essential that he be here or not.

Mr. Costello: He should be here soon.

Mr. Langdon: Are you submitting these statements through different witnesses than actually filed these statements?

Mr. Foley: That is correct. These men will adopt the testimony of the witness, and be subject to cross examination.

Mr. Langdon: Who are these substitutes?

Mr. Foley: In the case of Mr. Burke, who is the Commissioner, deputy commissioner Rigney, Raymond Rigney is here.

And in the case of Mr. Hunt, Bertram F. Collins, who is staff adviser to the Transportation Committee.

Mr. Langdon: Let me see. May I ask you off the record.

Exam. Boat: Off the record.

(Discussion was off the record.)

Exam. Boat: On the record.

Perhaps we can proceed in that way.

[fol. 395] Mr. Foley: May I have marked for identification, and then admitted, Statement on behalf of Associated Industries of Massachusetts in Support of Equalization of Export-Import Rates?

Exam. Boat: That will be identified as exhibit 48.

(Exhibit 48, Witness Hunt in support of Respondents marked for identification.)

Mr. Foley: And then may I have marked for identification, Statement of John T. Burke, Commissioner, Commonwealth of Massachusetts, Department of Commerce.

Exam. Boat: As exhibit 49.

(Exhibit 49, Witness Burke in support of Respondents marked for identification.)

Mr. Langdon: May I ask, sir, in connection with 48, whether or not the Associated Industries of Massachusetts —is that confined to industries in Massachusetts?

Mr. Foley: That is right.

It is confined to industries in Massachusetts.

Exam. Boat: Is there cross examination desired?

These witnesses will adopt these statements as their statements?

Mr. Foley: That is correct.

Exam. Boat: Very well.

With that understanding, then, the exhibits I understand are offered.

[fol. 396] Mr. Foley: They are offered. May they be received?

Exam. Boat: They are received in evidence as identified.

(Exhibits 48 and 49 are received in evidence.)

Exam. Boat: Mr. Colgren, I think we are ready for Mr. Heywood.

Mr. Colgren: Mr. Examiner, after a very hurried conference at lunchtime with my cost people, it has become very apparent that I may not complete the cross-examination of Mr. Heywood at this time.

Now that is premised on the belief that his exhibits 3 and 4 distributed today would be accepted in evidence, and we certainly have no quarrel with that.

As a matter of fact, we were surprised when, in the first instance, the purported cost study was instituted on a fully-distributed basis.

I think we will offer no objection to the receipt of these exhibits, but necessarily we must have time for their analysis, for the securing and the study of the underlying data and I have this to suggest: That we have an adjourned hearing for the purpose of cross examination of witness Heywood, which should not be any sooner than March 10 by reason not only of the time necessary for analysis, but by reason of other commitments of our cost department.

Mr. Macleay: Add another week to that, will you please? [fol. 397] Mr. Colgren: Gladly.

Mr. Macleay: I have a hearing in Tampa starting on the 11th.

Mr. Colgren: Which would bring it, I presume, to March 17, to accommodate Mr. Macleay.

Exam. Boat: With that date in mind, I would have to confer with the Chief Examiner. I am assigned to a hearing in Duluth beginning on March 17 at the present writing, unless there have been further developments in that case, I do not know.

Mr. Colgren: Perhaps we could have our adjourned hearing out there.

Mr. Macleay: Couldn't we have it the week prior to the 10th?

Mr. Colgren: No, that would be insufficient time, and there are other commitments of our cost people which preclude that, as we need the time necessary to analyze the information.

The Examiner realizes, I am sure, to present costs on a fully-distributed basis is one thing, and to present another cost study on an out-of-pocket basis is not a simple matter, it is an entirely different cost study.

Exam. Boat: I understand your position.

Mr. Bongartz: I do not know whether Mr. Colgren has to argue this point. We have no objection to an adjourned [fol. 398] hearing for this purpose.

I might point out, if it is helpful, that Mr. Colgren's characterization of Mr. Heywood's first set of cost exhibits is not correct in that it did not purport to show fully-distributed costs.

I cannot see any point in arguing that now. I think Mr. Colgren possibly misunderstood that, maybe he had something else in his mind in connection with this request, but we are not opposing this request.

Exam. Boat: With that understanding, then, do you want to proceed with the cross-examination to the extent you are able to do so now?

Mr. Colgren: I would prefer not, as that was really the reason I mentioned that the studies are completely different.

The cross-examination that I have was prepared on the basis of the fully-distributed cost exhibits presented, and it might very well be that questions will take an entirely different turn.

Now, at this time, Mr. Examiner, I would like to request of Witness Heywood certain information that was necessary —in fact, I was going to ask most of this information of him, and it is necessary to a proper evaluation, and much more necessary that we have this for analysis on an out-of-pocket presentation than it was on a fully-distributed cost basis.

[fol. 399] Exam. Boat: Can you take up with him that particular or those particular matters, whether he can supply them?

Mr. Colgren: Yes.

The only problem would come if there was any hesitancy on his part to supply anything that we thought might be vital to our inquiry.

I am perfectly agreeable to submit a list of the further material to Mr. Heywood.

Exam. Boat: I suggest you do that, and narrow it down to whatever matter there is in dispute as to their willingness to furnish it.

Mr. Colgren: Yes.

Exam. Boat: Off the record.

(Discussion was off the record.)

Exam. Boat: On the record.

Mr. Bongartz: Mr. Heywood.

J. L. Heywood a witness was sworn and testified as follows.

Exam. Boat: We know it won't be as rigorous as you anticipated.

The Witness: I never anticipate anything.

Mr. Bongartz: Quite disappointing to him.

Direct examination.

By Mr. Bongartz:

Q. Mr. Heywood, I show you a statement of five pages to which is attached a verification page in this proceeding [fol. 400] entitled "Testimony of J. L. Heywood," and ask you if that is your testimony in this proceeding?

A. Yes, sir.

Q. You are the individual who took the affidavit I refer to?

A. Yes, sir.

Q. Now, referred to in that statement are two exhibits which were distributed with the statement, but since the original distribution you have had occasion to make revisions in those exhibits, right?

A. Yes, sir.

Q. And the revised exhibits were labeled J. L. H.-1 Revised, and J. L. H.-2 Revised?

A. Yes, sir.

Q. In addition to those exhibits, we caused to be distributed this morning two exhibits bearing identification J. L. H.-3 and J. L. H.-4?

A. Yes, sir.

Mr. Bongartz: Mr. Examiner, may Mr. Heywood's statement, together with J. L. H.-1 Revised, J. L. H.-2 Revised, J. L. H.-3 and J. L. H.-4 be marked for identification?

Exam. Boat: I identify that exhibit No. 50.

(Protestant's Exhibit No. 50 witness Heywood was marked for identification.)

Mr. Bongartz: May the record show I am handing the [fol. 401] originals to the Reporter.

Exam. Boat: Not received in evidence, however, at this point.

Mr. Bongartz: I understand that.

By Mr. Bongartz:

Q. Mr. Heywood, in your JLH-2 Revised, have you come across an error which should be corrected?

A. Yes, sir.

Q. And that is in what connection?

A. In connection with the differentials in the rates.

Q. The rates on what?

A. Well, the first one is rates on automobiles.

Q. You are looking at page 2?

A. Page 2, revised—page 2 of JLH-2 Revised.

Q. And that is in the category of automobiles, group No. 613?

A. Yes, sir.

Mr. Bongartz: Mr. Examiner, the witness has just explained there was an error originally in computing the revenue because of an inadvertence of the rate which would have the effect of changing the revenues shown and would, also, of course, require a recalculation of the ratio.

Mr. Heywood has those corrections in front of him and if it is agreeable to counsel, we can have him read those into the record and counsel can take them down now. Or, if they prefer, we would be glad to issue revised pages to the extent [fol. 402] necessary to cover these corrections.

Exam. Boat: Off the record.

(Discussion was off the record.)

Exam. Boat: On the record.

It would be better if a revised exhibit were furnished.

Mr. Bongartz: We will understake, then, to distribute to counsel, according to the service list, the pages that require correction, and we will do that at the earliest opportunity.

Exam. Boat: I wonder which counsel are interested in receiving the revised figures, are there many?

Mr. Bongartz: It would be well if we did not have to send it to all of the granges and other organizations.

Mr. Moerman: The reporter furnished a list of appearances here that could be used.

Mr. Bongartz: Could we use the appearances at the aring?

Mr. Moerman: Yes.

Exam. Boat: That is agreeable.

Will you do that?

The Witness: Yes, sir.

Exam. Boat: You will be able to furnish that rather quickly, I presume?

Off the record.

(Discussion was off the record.)

[fol. 403] Exam. Boat: On the record.

The Witness: Let's say the early part of the first week in March, or the latter part of next week.

I do not know how we are tied up. We are tied up a lot on annual reports.

Exam. Boat: Very well.

Mr. Bongartz: We will try to get them out by the end of next week.

Exam. Boat: It is understood, Mr. Heywood will furnish revised sheets in substitution for the corrected pages.

Mr. Bongartz: Is Mr. Heywood excused for the moment?

Exam. Boat: We will excuse him subject to further recall.

(Witness excused subject to further recall.)

Mr. Macleay: Mr. Examiner?

Exam. Boat: Mr. Macleay.

Mr. Macleay: I understand Mr. Miller is back in the hearing room—excuse me.

Mr. Langdon: Mr. Examiner, apparently Mr. Colgren represents this cost study that was distributed this morning on an out-of-pocket cost basis as a different approach to the question of costs, and I want to know whether or not the New York lines which he represents would now in the light of this new approach, as he recognizes it, join with us in undertaking to determine the New York Harbor costs [fol. 404] including their railroads as well as our own?

Mr. Colgren: Mr. Examiner, the answer, quite bluntly, is no.

Mr. Langdon: Thank you.

It is immaterial, apparently.

Mr. Macleay: Mr. Examiner, when Mr. Miller was out of the room Mr. Walker raised the question about the time for further cross examination in order that we might try to schedule the appearances of our witnesses.

As Mr. Walker said, Mr. Miller has called some twenty-odd witnesses, more than half of whom were not called by anyone else, but did not comply with the request that he indicate some time for his cross examination.

I would like to request that we be given some such indication at this time, if we may.

It is very difficult to schedule the appearance of witnesses under these conditions, not only are they all busy men with other committments, but with the present state of the weather in the surrounding territory, it is becoming a little complicated.

Exam. Boat: Mr. Miller?

Mr. Miller: I will seek to try to estimate the time of cross examination. It would be a matter not of actuality. I never take very long on cross examination—15 minutes to a half hour would be the longest time required.

Exam. Boat: You would not require that much time of [fol. 405] each of these witnesses, would you, Mr. Miller?

Mr. Miller: Pardon.

Exam. Boat: You would not require that time for each of these witnesses, would you?

Mr. Miller: No, I would say probably fifteen minutes would be enough.

Exam. Boat: Will that be helpful, Mr. Walker?

Mr. Walker: It that is the best we can get, we will have to accept it.

What does that amount to—five hours?

Mr. Macleay: That is 22 witnesses at 15 minutes per witness.

Mr. Walker: That is five hours, that is one day.

Mr. Macleay: I wonder, Mr. Examiner, under these circumstances, if we would not perhaps get off the record to get some idea of what witnesses are readily available for this week so others can be released and told to come in on Monday.

Exam. Boat: Off the record.

(Discussion was off the record.)

Exam. Boat: On the record.

I guess we are ready to proceed with Mr. Mollman, sir.

MELVIN L. MOLLMAN was sworn and testified as follows:

Direct examination.

By Mr. Langdon:

Q. Mr. Mollman, you prepared a verified statement to-
[fol. 406] gether with four exhibits identified respectively as MLM-1, MLM-2, MLM-3 and MLM-4, right?

A. That is correct.

Mr. Langdon: The witness is tendered for cross-examination.

I beg your pardon, before the tender is made, yesterday or possibly the day before, reference was made to an exhibit which had been prepared by Mr. Mollman, or rather, under his direction, which represented a consolidation of the traffic data for the two sides in this case, for the lines on both sides of this case, for the statistical year 1955-1956. I showed a copy of this exhibit to Mr. Colgren last night, and I think it is my understanding that he is agreeable to having the record contain this exhibit.

As I say, it is no more than a consolidation of figures already in the form of the traffic study submitted on the

one hand by the New York Central and allied lines, and the Pennsylvania, B & O and allied lines on the other, for the Ports of New York, Philadelphia, Baltimore and Hampton Roads.

Mr. Foley: Is Boston in that?

Mr. Langdon: No.

That ought to be identified, sir, I think.

Exam. Boat: Separately as a part of Mr. Mollman's presentation?

[fol. 407] Mr. Langdon: I think it should be appropriately designated as MLM-5.

Exam. Boat: Very well.

That may be identified as such and will be treated as a part of Mr. Mollman's entire exhibit.

Mr. Langdon: As exhibit MLM-6, I offer a summary of Export Carloads, other than coal, coke and grain, unloaded at the North Atlantic Ports from the years 1939 to 1956.

These figures shown on this exhibit of three pages represent no more than computations based on certain basic data submitted by witness Crookshank.

We think that these computations, which, as I say, do no more than adopt his basic figures, or substantially his basic figures, are helpful and clarifying and should be in this record as MLM-6.

Mr. Moerman: May we have copies?

Mr. Langdon: Aren't they distributed?

Mr. Welsh: No, we have not seen them yet.

Might we have or may have a number for identification for Mr. Mollman's exhibit, together with these statements?

Exam. Boat: The exhibit will be 51. Mr. Mollman's exhibit will be 51.

(Protestant's Exhibit 51, witness Mollman, was marked for identification.)

(Protestant's Exhibits MLM-1 to 6 are marked for identification.)

[fol. 408] Exam. Boat: Perhaps we could proceed with the cross-examination, as it will take some little time, and give the parties opportunity to look over these supplemental exhibits.

Mr. Langdon: Yes, sir.

The Witness: As I say, they introduce nothing new in the way of basic figures. The only thing they do do is put together certain figures already in the record and certain computations based on figures in the record in MLM-6.

Mr. Foley: These only deal with export, I understand?

Mr. Langdon: No, import, too.

Mr. Foley: Then we have not got them.

The Witness: MLM-6 now only deals with export, Mr. Foley.

Mr. Costello: The other is at the bank.

Mr. Langdon: I might explain MLM-5 deals both with export and import. That is a consolidation of the traffic study.

MLM-6 of course, deals only with export, because that is the only movement covered by the AAR figures.

Exam. Boyt: We are ready to proceed, I think, Mr. Colgren.

Mr. Colgren: All right, sir.

Cross examination.

By Mr. Colgren:

Q. Mr. Mollman, just as a matter of clarification, on page 2 of your Verified Statement you indicate that the [fol. 409] October 20, 1955 action on the proposal of the New York Railroads calling for the establishment of port equalization included inter-coastal and coastwise traffic, is that correct?

A. That is my understanding of it, yes.

Q. On page 3 you also refer in the first full paragraph there to coastwise and inter-coastal rates.

It is not your understanding that coastwise or inter-coastal rates are involved in the present proceeding, is it?

A. I believe the tariffs as published, following the announcement of the New York lines and the lines serving the ports south of New York, are now limited to the import-export traffic.

Q. Mr. Mollman, again on page 3 you state as a joint opinion the Protestant railroads that if the equalization is

accomplished, the import-export traffic through Baltimore and Philadelphia from the affected territory will literally dry up in a relatively short time.

Mr. Mollman, are the Baltimore railroads participating today in shipments of bananas through Baltimore?

A. Yes, we are.

Q. To a fairly large extent, isn't that true?

A. Baltimore has a large movement of bananas moving into differential territory and to the territory east of the differential territory lines.

Q. That is also true of New York, is it not?

[fol. 410] A. That is correct.

Q. Are they moving on comparable rates?

A. They are moving on differential rates. There are facilities available at Baltimore, and there are facilities available at New York for the movement of this traffic and as I understand the banana movement the relation of rates has nothing to do with that movement.

Wherever they had the supply available, that is the point from which they move that particular quality of banana.

Q. Then it is not your contention that the movement of bananas through Baltimore will dry up in the event of equalization?

A. I think there would be quite a diminution of the traffic from Baltimore if you removed the differentials because of the hinterland territory of New York which would cause more of their ships to move in there and, consequently, the greater the supply at New York, the greater the movement to the territory beyond.

Q. Mr. Mollman, are you contemplating additional facilities and improved facilities for the handling of bananas at Baltimore?

A. That is right.

Q. Isn't that true, also, of your ore facilities at Baltimore?

A. I know of—I have no information at the present time [fol. 411] that we are going to improve our ore facilities.

As far as banana facilities are concerned, yes, they are being improved. We expect to have new piers. One of the

reasons that thing is being built there is because we have now to have a differential in order to get this traffic.

Q. Please turn to page 10 of your Verified Statement, if you will.

A. Yes, sir.

Q. What is the basis or what is your basis, rather, Mr. Mollman, for saying there in the first paragraph "The execution of the agreement"—and you refer to the 1877 agreement—"led to the appointment of this special committee" you refer to there?

A. Well, I reviewed the history, and that was my conclusion of that history as a result of the 1877 agreement there was an investigation of the agreement, or something to that effect by the New York State Assembly.

Q. Mr. Mollman, in connection with that committee you quote from the testimony of Mr. Blanchard, then vice president of the Erie Railroad.

Are you familiar with the entire quotation of which this is a part?

A. Well, there were about three volumes in connection with all of that history.

I think I read most of it.

Q. Are you familiar with the paragraph from which this [fol. 412] quotation is taken?

A. Yes.

Mr. Henry: Page 3175.

By Mr. Colgren:

Q. Now, Mr. Mollman, I do not know whether we have the same reference that you are looking at that was just handed to you by counsel.

The quotation I have and the source it is from is an entire paragraph which starts—the answer starts—"to make the rates to Philadelphia and Baltimore so much nearer to New York rates—"

Does that agree with the answer as you have it?

A. Let me find it here. To narrow down this difference and make the rates to Baltimore so much nearer to New York.

Q. Yes, that is it.

A. That is correct.

Q. I hate to burden the record with the—well, it is only about 7 or 8 lines.

Your quotation on page 10 is taken about from the middle of that answer, is it not?

A. It is taken down pretty well at the end of it, yes.

Q. May I ask that you read into the record the forepart of that answer?

A. I start with where he—

Q. No, please, I just want to put this statement in context.

[fol. 413] Mr. Henry: Let him put it all in, Mr. Colgren.

The Witness: I would like to put in what led to this, if I may.

"Question: And it would apply the same to all northwestern points coming through Chicago?

"Answer: Yes, sir, everything that passed through Chicago. Before arriving at differences after the southern trunklines had agreed to reconsider this whole question we sent our agent to Baltimore and Philadelphia to ascertain as near as possible the rate prevailing from those points by steam, the sail rates being so fluctuating that it was very difficult to establish a differential upon those but we gave the sail as far as possible." I hold in my hand a copy of the report made to us of the ocean rates of freight from Baltimore to Liverpool during the year 1876.

"The rates charged from Baltimore to Liverpool during the entire year of 1876 during this contest to which I have referred, the reports which, upon comparison with New York, appeared at that time to justify the allowance—justify the difference of 3 cents per 100 pounds."

"Do you say that was furnished to you gentlemen?

"Answer: That was one of them. We obtained that by sending our agent to Baltimore to procure it and the information contained in that paper was submitted before the [fol. 414] agreement upon the differences and it is upon that that your agreement was based."

It is upon that basis that the agreement was largely made. I believe that states the rates and how they changed and how they are now.

"Question: State upon what principle or basis those differences were adjusted and what has been the results upon the grain and other traffic of the cities affected by it."

That is where we start out.

Mr. Costello: Keep on reading there from that point.

The Witness: All right.

Exam. Boat: How much more do you have?

The Witness: About 35 or 40 or 50 lines.

Exam. Boat: Don't we have a way of getting this in?

Mr. Costello: He omitted the very part that makes the reference that we want.

Mr. Colgren: We are now just getting to the part that I wanted him to read into the record, Mr. Examiner.

Exam. Boat: Well, proceed.

The Witness: "To narrow down this difference and make the rates to Baltimore so much nearer to New York than ever had been made before was an extremely difficult thing to do; It involved Western Railroads.

[fol. 415] "It also involved communities. It involved all the combinations of those local railroad interests at these different places. And of course, covering a vast extent of country and a great many lines, changed the local differentials that had been made first at 10 cents and next cut down to a fixed differential of 2 or 3 cents and involved an amount of conference that is hardly appreciable unless one has gone through it. We took into account as the paper of the 5th of April states as the starting point the fact that the sum of the rail and the ocean rates between any given point in the west and the average point in Europe must be the same through the different ports. Then it was claimed on behalf of some of these companies that they should be permitted to make for their local communities differentials as large as those formerly existing or larger than the export differentials but the difficulty of doing that is apparent. If we had done that, of course there would have been no foreign business. It would all have been consigned to the local merchants, giving them the advantages, a $5 advantage of the local rates. Declining to accede to any suggestion of that character, we urged that the differences must apply upon all the traffic to these cities. Now I do not think that

the New York merchant would have had the right to com-
[fol. 416] plain or a citizen of New York upon a barrel of flour that comes here to be made into bread for his household if he paid 10 cents a barrel more for it than is paid by the citizens of Baltimore who did the same thing.

"For the reason that we carried that property from the local merchant's point, say 272 miles in the illustration used by Mr. Garrett for only 10 cents difference. We were not called upon by any merchantile principal or uses to carry that extra distance for nothing."

Exam. Boat: That is enough.

By Mr. Colgren:

Q. Mr. Mollman, isn't it apparent that in the remainder of your quote from Blanchard's testimony, Mr. Blanchard is talking about domestic rates?

A. I am not sure that Mr. Blanchard was just talking about domestic rates or import-export rates.

Q. Well—

A. The fact is that regardless of what we may have been talking about, that we had a domestic rate adjustment, that we established an import-export adjustment.

That when we established that import-export adjustment, of 3 cents it was not limited to that import-export traffic but was made applicable on all traffic—all kinds of traffic.

The only difference between the two types was that in some instances we made rates lower on the import-export freight than was applicable on domestic traffic.

[fol. 417] Q. Well, I think you have correctly stated the history, but I must come back to my question and ask if what you just read does not establish that Mr. Blanchard in this quotation in your testimony was not talking of domestic rates, rather than the export-import rate adjustments?

A. I think he was talking about all traffic.

That is my opinion.

Q. All right.

Mr. Mollman, on pages 32 and 33, particularly page 33, you make some conclusions as to the traffic involved in this adjustment, and also its relationship to what is projected in the future.

Is it your understanding, or rather, do you not understand from the revision to the tariffs publishing the equalized rates that the only rates adjusted were those which had to apply to Baltimore, Philadelphia, New York and Boston?

The Witness: Will you repeat that question, please?

(The question was read by the reporter.)

By Mr. Colgren:

Q. Maybe I can clarify that.

Will you agree, Mr. Mollman, that the formula followed in publishing the adjustment in terms provided that it only affected rates if they were published to the four ports of Baltimore, Philadelphia, New York and Boston?

Mr. Langdon: Do you understand the question, Mr. Mollman?

The Witness: I am not sure I do. I am still at sea as [fol. 418] to what you mean by publishing to the four ports.

By Mr. Colgren:

Q. Well, let me put it this way:

Will you accept my statement that the tariff note which provides the adjustment says, in so many words, that the rate adjustment must apply to Baltimore, Philadelphia, New York and Boston, in order for the adjustment to take effect?

A. It may be that in your announcement you said that the import or export rates had to be published from and to the four ports. It has been so long that I had forgotten just how that was.

Q. Well, I was asking—

A. But from a practical standpoint, the only rates that are under suspension in these proceedings, as I understand it, are the rates specifically published for application on import or export traffic, but we certainly can not disregard the fact that there are volumes of tonnage that move to and from the respective ports on domestic rates.

A number of those domestic rates reflect the port differentials in the sense they may not reflect the exact 3 cents at this time, but they do reflect the port differentials.

They move a goodly volume of import-export traffic.

I could only conclude that, if what you are seeking came to pass, whenever there is an import movement from the Port of Baltimore at the lower rate you would immediately establish an import or export rate from New York to meet it.

[fol. 419] Consequently, I say that all of the traffic that is imported or exported has to be considered.

Q. Mr. Mollman, on page 33 you state about halfway down in the first paragraph there that it is for this reason Protestant's traffic study is based on the fact of actual importation or exportation as far as that could be determined.

Am I to understand that your traffic study does not include all of the export-import traffic handled through Philadelphia, Baltimore and Hampton Roads?

A. To the best of my knowledge and belief it includes every pound of freight that moved through those ports.

I might say this, that we took considerable time and it took considerable effort in order to obtain every pound of traffic that moved through those ports so we could include it in this statement.

We had as many as 20 men working on this job at one time, from other railroads another 10, to accumulate this information and make it as accurate as possible.

What I am referring to there is the impossibility—at least we found that not possible—to determine all of the traffic that moves through the Port of New York. I have in mind traffic that is imported there and processed or moves out for the forwarders where the import rates are not applied; we have absolutely no source of getting that information.

We know that there are large volumes of traffic that move [fol. 420] into the Port of New York and is forwarded inland to differential territory on these forwarder rates, and it moves on the domestic rate, or if not, at least import rate is not applied, so we cannot check it, we cannot find it. It is impossible.

Then you have traffic that moves into New York to the warehouses, and it leaves the possession of the railroad and consequently the import rates are not applied on that traffic, but nevertheless it is traffic that moves into New York, it is

traffic that moves out of there on the domestic rate, if you please, and that is the traffic that I could not find, and I do not think you could find it, either, on your study.

Q. Well, I do not think you should impute to us your same problems.

A. I do not mean that, but I think you have the problem. You have forwarders on your railroad, sir.

Q. Yes, sir, I know, Mr. Mollman, but that brings me to a very necessary question: How did you determine the traffic which you show in your traffic studies?

What was the basis or method followed in your traffic study?

A. In some instances we went to the agent's offices, the Pennsylvania—well, the Pennsylvania man will be on the stand and he can talk about his.

I went to New York and had one of my assistants go to New York for the purpose of obtaining the Central Railroad [fol. 421] of New Jersey study.

We laid out what we wanted, and we had their agent's clerks, paid them overtime to check out the record from the waybills in those offices.

We checked from the waybill records in our offices on the B & O and I know the Western Maryland did the same thing at Baltimore.

Those were actually checked from our records and from the waybills.

Q. When you say from our records and the waybills?

A. From the records, in the agent's office. Everyone, there is not a thing in here that has not been taken from the waybills, none of them.

Q. This is in fact, then, an actual waybill study?

A. Yes, sir.

Q. You did not use any other records in ascertaining the traffic?

A. The way we did some of that, the waybills had been put in to our division freight office at Baltimore, the waybills were there, they compiled the record. They compiled the record daily and then it was made into a monthly report.

That was taken right from the waybills, when it was made on that, and we compiled from that in those instances where it was not taken from the agent's office.

But in the final analysis, it was the waybill from which that record was made.

[fol. 422] Every export waybill goes into our office at Baltimore and is kept there.

Q. Aren't all of your export and import waybills so indicated?

A. Yes, sir, they are marked import and export. I think the accuracy of our waybills, if I may so add, will check pretty close with the PT figures—PT 6 reports.

Q. I am not doubting the accuracy of your study, Mr. Mollman. I was just trying to clarify some of the statements you made here.

A. That is perfectly all right.

Q. Mr. Mollman, on page 34 you talk of the possibility of pressures being applied if export and import rates are made different from domestic rates.

A. What page?

Q. Right at the top. You say anyone familiar with the railroad industry knows of the intense pressures which would thus be generated seeking reductions in the domestic rate. Right at the top of page 34.

A. All right.

Q. Doesn't the B & O railroad participate in so-called proportional rates in domestic traffic?

A. Yes, we participate in proportional rates to the Mississippi River.

Q. And that is common. Most of the railroads participate [fol. 423] in proportional rates, do they not?

A. That is right.

Q. In your mind, do export and import rates fall in the same category as proportional rates?

A. No.

Q. All right.

Is there competition necessarily at a port between domestic traffic consumed at the port and export and import traffic moving through the port?

A. I do not understand your question.

Will you repeat it?

Exam. Boat: Read the question.

(Question read.)

The Witness: I do not know that I can answer your question.

By Mr. Colgren:

Q. I think you must understand what I mean, or at least let us discuss it a minute.

There is a certain amount of traffic, is there not, domestic traffic, shipped to any port for consumption at the port, and similarly traffic originating at the Port for destination in other territory which has no relation to export and import traffic or foreign traffic moving through that port?

A. I will try and answer your question this way: I do not know that I understand it clearly, but I will put it this [fol. 424] way.

There was an export rate on a given commodity, I can't recall at the moment, in effect on an exceptions basis in to official territory.

As a result of that basis, shippers at Midland, Michigan, who are also shippers of the same commodities, had a request for a reduction in your domestic rates in order to meet that competitive situation.

Q. Where was the competition there?

A. The competition was in the foreign market that you had refused your rates, and because of the reduction in the import rate the domestic producer was no longer in position to compete, and as a result we established a reduced basis of rates on that domestic commodity in order to meet that competition.

Q. That is actually market competition, is it not?

A. Whether it is market competition or not, it shows the reduction in the rates places the domestic producer in the position where he has to meet that competition, and we have to help him meet it if we can, and make some money.

Q. I cannot quarrel with that.

Now, let us go back.

You have not really answered my question. There is, of course, a lot of traffic terminating and originating in all the port cities.

[fol. 425] A. That is true.

Q. Domestic traffic, is that right?

A. Yes.

Q. Is that traffic competitive with traffic moving through the port city for destination, or perhaps having originated abroad in foreign traffic?

A. If they are the same commodity, obviously they are in competition.

Q. Are they in competition at the port?

A. Yes, they are in competition at the port.

Q. You will have to explain that answer to me, Mr. Mollman, I do not understand that.

A. I do not know that I understand your question, either. We are talking about competition at the port.

Once you import any commodity into Baltimore or into New York or into Philadelphia it is in competition with anything that is produced in the United States.

Q. I was not referring to foreign traffic—

A. You asked me about import traffic, sir, maybe I misunderstood you, Mr. Colgren.

Q. That is right—moving through the port.

And I asked you whether that traffic was competitive with domestic traffic originating or terminating at the port.

A. Sure, it is competitive. Anything that is imported into the United States to be marketed in the United States is [fol. 426] competitive with anything that is produced in the United States.

Q. At the port city?

A. Anywhere.

Mr. Langdon: If it is the same commodity?

The Witness: If it is the same commodity, of course, absolutely.

Why do they bring it into the United States—they bring it in to sell. They bring it in to sell it in competition with what we produce, to a degree, if you are talking about the same commodity.

By Mr. Colgren:

Q. Mr. Mollman, I am talking about transportation actually.

A. You asked me about commodities.

Q. Certainly. I have to bring out my point.

A. O.K.

Q. Traffic moving through the Port of Baltimore for destination in a foreign country originating some places outside of Baltimore, you say is competitive from a transportation standpoint I am talking now, with traffic destined to Baltimore for consumption at Baltimore.

A. I did not say that.

Q. Well, I did not think you meant to.

A. I did not say that.

Q. All right.

[fol. 427] You did not mean to say that, is that right?

A. You asked me about traffic that was coming into the United States and traffic produced in the United States, if the two of them were competitive.

I said that they were.

Q. I asked you specifically at the port.

Well, at any rate, you do agree that they are not competitive at the port?

A. What is not competitive at the port?

Q. Oh, Mr. Mollman, we are going around and around and around on this.

A. Maybe I lost you or you lost me; I do not know which, but I cannot answer your question which you have just asked me.

Q. Since you have devoted several pages to this point, at least what I conceive to be your point, I want to get it straight for the Examiner's consideration.

If traffic originates—let's see if we can pin this down—suppose a given commodity originates in Illinois, and is destined to Paris and moves in foreign commerce through the Port of Baltimore.

The same commodity has some market in Baltimore, it is going to be consumed in Baltimore.

A. Right.

Q. From a transportation standpoint, is that commodity or are the services accorded that commodity competitive at [fol. 428] Baltimore?

A. You accord a different service on export traffic than you do for domestic traffic.

Q. Of course you do; of course.

A. Far more expensive services on the export traffic.

Q. Mr. Mollman, actually, you are the one that is getting us off the track.

A. No, I said anyone familiar with the railroad industry knows the intense pressure that is generated in seeking reductions in domestic rates for purely domestic movements.

What I had in mind saying what I had there at that time was that I was talking about the reduction in the import or the export-import rates—

Let me correct myself.

That those reductions in those rates will be used as a pressure to reduce the domestic rates. And I cited an instance of what I had in mind. That is exactly what I meant. If you have some different interpretation, I am sorry.

Q. No, I think I agreed with your interpretation, because you specifically took an example where there was actual competition.

A. That is right.

Q. —within the United States, for the same commodity.

A. Yes.

[fol. 429] Q. But you did not limit it, as I am doing, to the Port city through which this traffic moves en route to foreign destinations.

I fail to understand, and I am sure that you must eventually agree with me when we get to an understanding of what we are talking about—

A. Well, let's put it this way: Let me see if I can answer your question. I am trying to answer your question, I want to be as honest with you as I can.

That, in traffic there are commodities produced at the Port, that moves in export traffic. That that traffic is competitive with material that is produced inland, if you are in the export market.

Q. That is not my question. I am talking about the transportation—rail transportation, if you please, to and from the Port, confining it on the one hand to domestic traffic being consumed at the port by the people and industry at the port, and on the other hand export traffic on its way to a foreign destination.

Is there anything competitive about that, about those two different shipments?

A. The competition is between the ports, not between the cities—that is, as the consumer-producing point.

Q. I am not going into that.

All I want to know—and it is dictated by your statement [fol. 430] ending on page 34—is whether or not there is rail competition between a commodity terminating in a Port for consumption there and a commodity due for further transportation and ultimately destined to go abroad?

A. There is competition in the movement for any traffic.

Q. Oh, that is much too general.

A. There is, there is competition. We will take the movement from Cincinnati, if you please, to Baltimore. There is competition for that movement between all of the lines that operate between those points.

Q. I am talking about competition between commodities, which would have any bearing on the railroad rates at which it was transported.

Mr. Langdon: Do you mean commercial competition?

The Witness: I just do not understand your question.

Mr. Colgren: Yes, commercial competition, certainly, any competition that would dictate the necessity for the same rates on domestic traffic as export-import traffic.

Mr. Langdon: Didn't he just say there was commercial competition between domestic production of one commodity and importation of that same commodity in to this country?

Mr. Colgren: Mr. Langdon, I am having as much trouble getting through to you as I am Mr. Mollman.

Mr. Langdon: I do not think, until the question is [fol. 431] clarified that you are entitled to answer, or that we can give you an answer.

Mr. Colgren: Let's see, I tried to restate the question three different times, I think, at least.

By Mr. Colgren:

Q. Let us start with this proposition: That we are trying to get to the bottom of your statement ending on page 34 concerning the intense pressures that would be generated seeking reductions in domestic rates even for purely do-

mestic movements, if export and import rates are adjusted one way or another.

Now, in seeking to get an understanding of that, I want you, Mr. Mollman, to consider with me a specific movement of a commodity originating in Illinois and destined for Paris moving through Baltimore.

Another shipment of that same commodity is purchased by a user in Baltimore.

Are those two rail shipments competitive?

A. No, they are two different movements.

Q. Sure they are.

Is there any reason why, if the proportion of the movement to the Port by rail, in consideration of its being a small part or a part of the total transportation, is made lower than the rate on the shipment terminating in and used in Baltimore, is there any reason why the domestic user has any cause for complaint?

[fol. 432] A. The Commission has found that there is ground for having different rates on import traffic and export traffic. I will have to accept the Commission's—if they have a difference between the import and export rates, and the domestic rates, I will have to concede that.

Exam. Boat: Let us take a 10 minute recess.

(A brief recess was taken.)

Exam. Boat: Come to order, please, gentlemen. Off the record.

(Discussion was off the record.)

Exam. Boat: On the record.

By Mr. Colgren:

Q. Mr. Mollman, why did you leave your own ore out of your traffic study?

A. I was advised it was not in the case.

Q. Well, Mr. Mollman, it is true, is it not, there are a lot of commodities whose rates are not disturbed by this adjustment, but which are still shown in the traffic studies of the respective railroads?

A. My understanding, at least the way I look at this, is that all of the traffic that is imported or exported exclusive

of coal, coke and iron ore is in this, and you would have to consider it.

Q. Why do you say that?

A. That is my opinion. I am not a lawyer, you are the ones that will have to say that.

[fol. 433] Mr. Langdon: Not only is iron ore not in this case, Mr. Examiner, but it is specifically involved in another case. So there are really two reasons for leaving it out.

The other traffic that is included here is traffic that is involved in the case either directly or indirectly.

By Mr. Colgren:

Q. Well, I am a little curious as to whose decision it was, or conclusion, that it was just not involved in the case, irrespective of the fact there is a current proceeding going on concerning iron ore.

Mr. Bongartz: I might likewise clarify that to this extent, Mr. Colgren.

There is no current proceeding pending with respect to iron ore as it concerns Boston, because the Commission has already ruled out the Boston rates in the case and the Federal Court upheld the Commission in that regard and in fact, no appeal was taken.

By Mr. Colgren:

Q. Well, then, Mr. Mollman, it was on advice of counsel you did not include the traffic statistics on iron ore in this proceeding?

A. That is right.

Q. Why did you leave out the tonnages with respect to coal, coke and products of coal?

A. I did not understand that they were in it, either, at least those tariffs were not in this. So, if I follow your thinking in the past, I am or was right in excluding it. It was [fol. 434] told to me that only the import-export rates as such were at issue in these particular tariffs.

Q. That is true, but we, nevertheless, for the information of the Commission, agreed to supply a traffic study which included all the traffic moving to and from the ports.

A. No, I did not understand that. I was here at that prehearing conference. Maybe somebody else has a different understanding.

I did not understand that. Anyway, I did not check any coal figures.

Q. I am just inquiring into any reason you may have had therefor.

A. Are you asking me a question?

Q. No.

Mr. Mollman, along that line I think we have no objection to your exhibit identified as MLM-5 but I just notice a peculiar situation here.

On page 1 of your import tonnages you show Commodity No. 309, Iron Ore, as moving 100 per cent in import movement through the Port of New York.

Of course the tonnage in connection therewith is 74 tons. Do you think that is a fair statement of the amount of imported tonnage via the Ports of New York, Philadelphia, Baltimore and Hampton Roads, with respect to iron ore?

A. That may be, that is a commodity index group 309. [fol. 435] That is ground iron ore, that is not the iron ore that moves in volume through the ports. That is a different type of movement.

Q. I see.

A. It is not the things you and I are talking about.

Q. Would the other iron ore carry the same commodity description, 309?

A. Yes, it is under 309.

Q. Mr. Mollman, on page 46, in that first incomplete paragraph there, you mention the allowance, or rather, you describe it as a discount of 50 cents per ton from the ocean rate if grain is loaded by means of a litering-floating elevator at New York.

A. That is right.

Q. Do you have any knowledge as to when that allowance was first published?

A. I heard about it about six or eight months ago. I can't tell exactly. It was during that period. I did not know you had such a thing until I happened to be up in New York at a meeting when I was told about it.

Q. You don't know that it was last spring, following the Suez crisis, then?

A. I do.

Q. Do you have any knowledge of its connection with serious congestion in the Port of Baltimore?

[fol. 436] A. No, sir.

Q. Is there—

A. I was told it was an advantage to the shippers if they could take one of those floating elevators that you have at New York and move it over alongside ship, it would save the expense of moving it around to an elevator, and that is the reason you get that 50 cents.

Q. I think that is probably right. But in addition to that, have you any knowledge of a serious congestion in the Port of Baltimore in respect to bulk grain movements last year?

A. I read about it in the paper, grain is not in my bailiwick.

Q. Have you any knowledge of the ship costs where detention in a port is involved?

A. I do not believe I am qualified to speak about ship costs.

Q. In discussing that 50-cent allowance, I note you indicate that the allowance amounts to 2½ cents per hundredweight.

If that were all that were involved, that would have the effect of eliminating the effect of the existing differential between Baltimore and New York, would it not?

A. I would say it would have some effect.

Q. Do you know what the charge for elevation is in Baltimore?

A. I would have to—that is a published tariff. The [fol. 437] tariff specifies what that is.

I think it is around 2 cents.

Q. Do you know what the charge in New York is for the elevation of parcel lots?

A. Not at the moment, no. It is published in the tariffs. They will speak for themselves on that. I could not say at the moment. It may be 2 and ½ cents, I do not know—or two and a quarter cents.

Q. Would you accept my statement it is two and three-quarter cents?

A. If you tell me that is what it is, I believe you.

Q. I think that is accurate. Thank you.

That has the effect of reducing that two and one-half cents materially, does it not?

A. I think we are getting into another realm here when we start talking about elevation.

I was in the grain game at one time, and I know that there is a lot of possibilities as to what you can do with grain, so when we get into the elevator and the moving of that grain through that elevator, I would not accept that that has too much to with this.

Q. All right, sir.

Mr. Mollman, on page 12 of your exhibit MLM-2—no, MLM-3.

A. Yes, sir.

Q. There you make certain projections, or rather, a [fol. 438] statement of tonnages and use as I think, a projection of figures derived from your previous pages 10 and 11.

A. That is correct.

Q. Mr. Mollman, I notice that you use, in getting your projection, an average weight per car of 27.85 tons.

A. Yes, sir.

Q. Which is the average tons of traffic moved and presented in your traffic studies?

A. Yes, that is 51,000 cars that moved through New York.

Q. Yes. If that tonnage average weight per car was materially less, your prognostication, of course, would be quite different, would it not?

A. Oh, that is right, if you had different average weights, you come up with a different number of tons. It is pure mathematics.

Q. Yes.

The reason I inquired, Mr. Mollman, the northern railroads made a complete study of all export and import traffic, but felt it unnecessary and not pertinent to the record to put other than affected traffic before the Commission, and it develops that the average weight would be nearer 19 tons than 27.8.

Mr. Langdon: Do you mean to say, Mr. Colgren, you have a traffic study through the Port of New York export-import traffic to and from other than affected territory?

[fol. 439] Mr. Colgren: Yes.
We never made a secret of that.
Mr. Langdon: It is not in this record, though.
Mr. Colgren: It is not pertinent to the record.
Mr. Langdon: Thank you.
Go ahead.

By Mr. Colgren:

Q. On the basis of the average weight of export-import traffic—actual average weight of 19 tons, you will agree that your prognostication here would be quite different?
A. If 19 tons was the correct figure, it would be reduced one-third.
Q. Yes, sir.
All right.

Mr. Langdon: May I ask, Mr. Colgren, at this point, if you would be good enough to produce that traffic study for the record?

Mr. Colgren: No, I do not think so, Mr. Langdon. We do not feel and never did feel that it was pertinent to the inquiry.

Mr. Marbury: Mr. Colgren has introduced plenty of evidence on the subject of showing other movements than the Central to CFA territory, why, then, would he not produce the traffic study relative to those other movements?

Mr. Bongartz: He stated it was his intention, the [fol. 440] intention of the railroads on the other side of the table, to extend equalization to other territories in the event they are successful here.

Mr. Colgren: I do not see anything inconsistent with what you gentlemen are saying. I still maintain that traffic to the unaffected territory is not involved in this inquiry.

Mr. Langdon: Does that go, then, to all of the traffic that you show in your army engineer exhibits and in your AAR traffic studies, and all of the other export-import tonnage showings that are not related to affected territory?
They all are irrelevant, then?

Mr. Colgren: Mr. Langdon, if you could break those figures down to affected as against the unaffected territory, I would agree with you 100 per cent.

Mr. Langdon: In other words, only that part of that tonnage included in those army engineering figures or department of commerce figures, or the PT figures of the AAR, that relate to affected territory, are relevant in this proceeding?

Mr. Colgren: No, I do not think that comes true. We took the best information that was available to show the respective movements of traffic through the ports, in order to substantiate our own traffic study which could be and was kept to the affected traffic.

[fol. 441] Mr. Langdon: It is very strange to me that the rail traffic that goes to and from non-affected territory, which apparently you have studied, the rail traffic that is export-import, is regarded by you as not relevant to this proceeding, and I am calling upon the other side to produce the study of traffic to and from New York to non-affected, if that is what they want to call it, territory. I think it is highly relevant. It is certainly more relevant that the Army engineers figures and the Department of Commerce figures which include truck traffic and may not have any transportation except—because of originating in the very port of New York.

Mr. Keenan: Mr. Examiner, whatever may be Mr. Langdon's view of the situation, the evidence for the Northern Tier Railroads has been submitted, filed and the witnesses have been cross examined.

We are now in the process of cross-examining for the Baltimore & Ohio Railroad. It is a rather extraordinary proposition to inquire concerning the evidence of the northern tier railroads at this time; on behalf of the Boston Railroads such request is objected to and when it is submitted in proper form at a proper time, if such a moment exists in this proceeding, we will answer it. I suggest we go on, if I may make one further remark, go on to the interrogation of the witness before the Examiner.

Mr. Langdon: Mr. Examiner, I would like to ask the [fol. 442] lines on the other side right now whether or not they are willing to produce this. If they say no, that will satisfy me and I will sit down.

Mr. Keenan: Certainly not, from the lines I represent.

Mr. Langdon: That satisfies me completely.

I take it you speak for all the lines?

Mr. Keenan: No, sir, I speak for the New Haven Railroad, and I think I am in position to speak for the Boston and Maine Railroad at this time.

Mr. Colgren: Mr. Examiner, this kind of puts me on the spot, because we do not have any real objection to producing the evidence.

The fact is that we are still of the opinion that we have certain rates in dispute before the Commission concerned with traffic in a well-defined territory, and that traffic, statistics concerning that traffic, was prepared and presented and discussed before the Commission.

Now, certainly to reproduce the rest of the figures and so on, that are impertinent in our view to the inquiry, seems to be quite a request.

I do not think we have an objection other than the fact that we feel it is unimportant, not pertinent, and so it would be an added expense and consumption of time which is uncalled for.

Mr. Foley: Mr. Examiner, I might add that the figures [fol. 443] as I understand it, would be only for certain of the lines in New York, and you would not have comparable figures for other places.

I think it would only tend to confuse the record. And I think that is what the Baltimore people are hoping for.

Mr. Colgren: That is precisely why we kept them from consideration in the first instance.

Exam. Boat: I don't think it would add anything into this record.

Let's proceed now.

Mr. Langdon: Do I understand, then, the request is declined, is that the disposition?

Mr. Colgren: The Examiner indicated he failed to see its significance here, and it bears me out to that extent. It is a burden I do not feel should be put to the carriers.

Mr. Langdon: That is all I need to have. I wanted it in the record, that is all.

By Mr. Colgren:

Q. Mr. Mollman, did you supply the movements which were used in witness Heywood's study—the traffic movements—to Mr. Heywood?

A. We gave him the information off of the traffic study, yes. Which was assembled in our office.

Q. Yes.

Did you exercise any choice in the matter?

[fol. 444] A. I am trying to remember just what we did about that. We took tonnage where there was heavy movements of tonnage to arrive at that, to take those to be representative.

Q. You mean by that numerous movements?

A. That is right, numerous movements to and from principal destinations, and so forth, of the traffic.

Q. May I ask how many movements you supplied for Mr. Heywood's consideration?

A. I do not have that work sheet here.

Mr. Langdon: I can answer that.

Mr. Heywood priced-out in his exhibits every single movement that was supplied as representative by the traffic people.

Mr. Colgren: That is what I am inquiring into, Mr. Langdon, there are some 54 shipments of comparatively few numbers of commodities. I am trying to ascertain who chose those?

Mr. Langdon: We will be glad to extend it. We will take all of the commodities if you will cooperate with us and help us price them.

Mr. Colgren: I don't know that I have that in mind.

Mr. Langdon: No, I do not think you do.

Mr. Colgren: I am not sure that the record is clear as to who supplied who with what information.

The Witness: You asked if we did and I answered yes.

[fol. 445] By Mr. Colgren:

Q. Yes, and now my inquiry was going a little further as to whether all of the shipments that you supplied Mr. Heywood were incorporated into his exhibits 1 and 2.

A. The answer is yes.

Q. Then it was actually you that exercised the choice?

A. It was done under my jurisdiction.

Q. I mean you chose which shipments were to be considered typical?

A. The Baltimore and Ohio employees selected those as representative.

Q. Yes.

I think Mr. Heywood indicated the traffic study was not complete at the time that the shipments—the data concerning the shipments were supplied to him.

Can you tell me when you did give him that information?

A. May I inquire of one of my assistants?

Q. Yes, sir.

Mr. Langdon: We must ask another witness.

Mr. Colgren: Yes, sir.

Mr. Langdon: Mr. Beggs who was working with Mr. Mollman on this.

Mr. Beggs: It was supplied in September, 1957.

Mr. Langdon: Is that just before the traffic study was completed?

The Witness: That is correct.

[fol. 446] Mr. Colgren: Mr. Examiner, I think Mr. Myskowski representing the New York Port authority has several questions.

Exam. Boat: Very well.

Cross examination.

By Mr. Myskowski:

Q. Mr. Mollman, I understand you supplied Mr. Heywood with the cars which you considered representative and which he used in the study, right?

A. It was done under my direction. I did not do it personally.

Q. In Mr. Heywood's study, I think on the export traffic he includes some, oh, fifty-odd cars.

And in that there are included two cars of 539 fertilizer, ammonium sulphate.

Would you turn to your exhibit MLM-2, at page 35, and tell me how many cars of fertilizer moved through New York via your three roads?

Mr. Langdon: Have you got Mr. Heywood's exhibit there you are talking about?

Mr. Myskowski: Yes, sir.

Don't you have it? It is my only copy.

Mr. Langdon: It is in my brief case someplace. I put it away. I thought we were through with Mr. Heywood.

The Witness: Then what is the number?

By Mr. Myskowski:

Q. 539. My question is, how many cars of fertilizer moved [fol. 447] from CFA territory through New York via your three roads?

A. That is on page 35?

Q. Yes, sir.

A. It shows none.

Q. So there were no cars at all during a whole year moved and you include two of them.

A. Wait a minute.

If you will look at page 28 you will find two cars that did move through New York.

Q. In other words, all of the cars of fertilizer during 1956 were included?

A. No, sir, two cars moved through New York.

Q. Would you do the same thing, sir, for item 323, on the import side, Clay, ball, or china? I think you can find that at page 98.

A. Will you repeat the number?

Q. Page 98.

A. I have page 98.

Q. 323. That is during the representative year there.

A. Yes.

There is none there.

Q. How many during the year 1956?

A. There is none there.

Q. Do you think it is a representative movement when you do not even move a car during a whole year and in- [fol. 448] clude three cars of a non-existence commodity.

Mr. Moerman: In a cost study?

Mr. Langdon: Mr. Myskowski, we will be glad, and delighted, you to pick out from our cost study or traffic study

or your traffic study any movements that you would like to have priced-out. These were selected from the point of view of a representative cross-section of import-export traffic, representative from the point of view of territory, representative from the point of view of loading, representative from the point of view of type of equipment.

Now, if in any way—

Mr. Foley: Mr. Examiner, this is quite a speech, but this is not relevant.

Mr. Langdon: Let me finish, Mr. Foley.

If there is going to be any attack on the ground that this cost study is applied against the unrepresentative movements, we will be delighted to apply the costs against any movements that you suggest as being more representative.

Mr. Myskowski: Sir, I am not representing any railroads, and we are not so far as I know, putting in any cost study.

Mr. Langdon: No, I know it.

Mr. Myskowski: I would like to examine the witness and ask him whether this testimony which he represents is so.

By Mr. Myskowski:

Q. Do you think that is representative, Mr. Mollman?

[fol. 449] A. I am sure there is a movement, maybe not to New York, but there is movement to other points that would be representative.

Mr. Foley: Representative of what?

By Mr. Myskowski:

Q. As I understand it, though, these were given for the purpose of showing the cost to move these commodities through New York and yet your exhibit shows that during the whole year no such commodities moved.

A. Well, there were some eight cars moved in 1955, so that there would be or were movements through the Port of New York.

Q. In 1955?

A. Regardless of what the year was, you have move-

ments that change, you may have a movement this year and not have any the next so those are representative of movements through New York. Maybe they did not move in 1955, maybe they moved in 1956, and maybe more moved in 1957, or none may have moved that year.

But there was a movement through New York.

Q. As I understood your testimony earlier you said you picked out commodities that moved in large volumes and were representative.

A. That is large volume.

Q. You included three cars of a commodity which did not [fol. 450] —even move during the whole year.

A. That is a commodity that moves in volume through North Atlantic ports, not necessarily volume through New York. It is traffic that moves, it is traffic that you are after, if you please.

It is the traffic that you are after, and it is the earnings which will result from that traffic.

Q. Wouldn't that be fine if you were showing it was non-compensatory at the other ports, but you are trying to show this traffic is non-compensatory at New York—

A. Yes, believe me we were flabbergasted when we found out what the cost was to go through the Port of New York.

Our company is very much—

Mr. Foley: I object.

The Witness: Our company is very much concerned with how much it costs us to operate through the Port of New York.

Mr. Foley: Mr. Examiner, that is not responsive to anything.

He is not qualified to talk about costs.

The Witness: I will answer this way.

Mr. Foley: There is no question pending.

Mr. Keenan: May the witness be instructed not to speak until there is a question addressed to him?

Exam. Boat: Answer questions only.

[fol. 451] The Witness: Yes, sir.

By Mr. Myskowski:

Q. Mr. Mollman, how much coffee proportionately, approximately, moves through the port of New York?

A. How much what?

Q. The total imports coming through New York, how much would you say is coffee?

A. How much is coffee?

Q. How much.

A. I will give you that. About 48 per cent.

I am quoting from memory. Let me get this sheet. What is the number of that?

Mr. Colgren: No. 75, page 2 of the import commodities.

Mr. Langdon: Here it is.

The Witness: Coffee, through New York, according to this statement which we took from our combined study, 133,265 tons which represented 98 per cent—98.62 per cent of the traffic moving through North Atlantic ports.

By Mr. Myskowski:

Q. There were 133,000 tons?

A. That is right.

Q. How many cars of coffee got into your so-called representative sample?

A. I would have to look at it to see. I do not know whether coffee is in there or not.

Q. Look at it. It is in there, the first one.

[fol. 452] I do not have an exhibit.

Mr. Keenan: Have you a copy of JLH-1 and 2?

The Witness: No.

Exam. Boat: Here it is.

Mr. Keenan: Thank you, Mr. Examiner. You may look at that.

Mr. Henry: The second to the last column.

The Witness: What is your question?

By Mr. Myskowski:

Q. How many cars of coffee got into your representative sample?

A. 528 cars totaling 16,493 tons.

Q. Yes, sir, but I mean in the list which you supplied to Mr. Heywood, how many cars of coffee were included in that fifty-some odd?

A. In what?

Q. How many cars of coffee were included in Mr. Heywood's representative group of cars?

A. 528 cars.

Q. I only see one, that is the top one, there.

A. That does not show the number of cars. That shows the average weight.

Q. That is exactly my point.

But you show three cars of clay, ball or china, when none of it moved in a whole year.

A. I said there was traffic moving through New York of clay ball or china.

[fol. 453] Q. None during the year of 1956, yet you show three cars of that and none of coffee?

A. That is all right. It is still representative of the movement that you are trying to get.

Q. How about rubber? Can you tell me if there is a substantial movement of rubber?

A. Yes, sir.

Q. Pretty large? What proportion, approximately?

A. What is the commodity number?

Q. 523.

A. I can't find the figures at the moment, sir. But I will say there is a substantial movement.

Q. Do you know how many cars of rubber got into your representative sample?

A. I have to find the commodity first.

Q. 523.

A. 367 cars, 12,850 tons of rubber, and 439 cars of latex, 17,646 tons.

Q. All right, sir.

And out of those, how many cars got into Mr. Heywood's group?

A. Just that many.

Q. In the study?

A. That is what I quoted, sir. I gave you what went into Mr. Heywood's study, 366—

[fol. 454] Q. I am referring to J. L.H.-1. There are fifty some odd cars listed. I was wondering how many of those cars were rubber.

Mr. Langdon: Mr. Myskowski, if I may straighten you out. These are not in Mr. Heywood's exhibits, cars, they are movements.

By Mr. Myskowski:

Q. All right, how many movements?

Mr. Langdon: Well, you have got fifty-some export movements, fifty or so import movements.

By Mr. Myskowski:

Q. Could you give me the answer, Mr. Mollman?
A. Well—

Mr. Langdon: I know, but you are asking the questions on the assumption that these movements that are shown in Mr. Heywood's exhibits represent individual car movements. They don't.

Mr. Myskowski: What do they represent?

Mr. Langdon: They represent typical movements.

In other words, representative movements. We took a movement of coffee.

By Mr. Myskowski:

Q. All right, how many representative movements got into Mr. Heywood's study of rubber?

Mr. Langdon: You can add them up as well as I can, fifty or fifty-five.

Mr. Foley: Can we have this from the witness?

The Witness: They are all listed. Those are the repre-
[fol. 455] sentative movements.

By Mr. Myskowski:

Q. On Mr. Heywood's list of 58 cars, how many are listed under group 523?

A. How many cars?

Q. Yes, sir.

A. How many cars were included in that study?

Q. No, in Mr. Heywood's study as being representative.

A. None.

Q. That is still not the right answer.

A. I can only give you the answer of what is there. There is no number of cars there. It shows the average weight of those movements.

Q. How many representative movements?

A. I would have to count up all the cars that were furnished him to tell you how many movements there were.

Q. I am talking about the exhibit of Mr. Heywood, JLH-1.

A. Yes.

Q. Which lists about fifty-some odd representative movements.

In those so-called representative movements are three called clay, ball or china, three such movements.

There are, so far as I can see, exactly one of rubber, 523, yet you tell me there is a tremendous amount of rubber going through, there is very little clay ball or china, none during 1956.

A. Let me answer you on rubber.

[fol. 456] Q. All right.

A. Probably the biggest consuming point—undoubtedly the biggest consuming point of rubber in the United States is Akron, Ohio. We picked that as being representative.

And you pick any better point than that, than the largest consuming point, can you?

Q. No.

A. All right. That is it.

Q. Mr. Mollman, how many tons, roughly, of import traffic do you show for the year 1956 through Baltimore?

A. Total traffic through the Port of Baltimore?

Q. Yes, sir.

A. You are speaking of import now.

Q. Page 81, I believe, isn't it?

Mr. Moerman: No, page 85.

The Witness: 1956.

By Mr. Myskowski:

Q. Yes, sir.

A. The total of all traffic for all points was—

Q. No, sir, just to differential territory.

A. 32,669 cars, 1,624,128 tons.

Q. All right.

Could you tell me how many of those are within the category 319, ores and concentrates? Page 78.

A. 1,015,463 tons.

Q. Could you tell me in your representative study—your [fol. 457] representative movements at Baltimore, how many tons, or how many movements of ore were included in your sample?

A. Well, to one point 2247 cars, 496 cars, 471, 1017, 732 and 1889. I would say that is a total of about 5,000 or 6,000 cars, with a total tonnage of in excess of 250,000 tons.

Q. Well, sir, I am talking about Mr. Heywood's listing.

How many representative movements in group 319 were included in that group of 50-some odd cars?

A. None.

Q. So even though the ores constitute a majority of the tonnage moving through your port, you did not even include a single car in your representative listing.

A. That is correct.

Q. All right, sir. We did not include them because you do not have the facilities at New York to handle that type of traffic.

Q. I am talking about Baltimore now.

A. It is New York here that has been used in this particular instance.

Q. We are not contending the costs at Baltimore are non-compensatory.

Mr. Mollman, at the time you are computing or making this traffic study, as I understand it, you took all the waybills from the various railroads, is that correct?

A. Yes, that is correct.

[fol. 458] Q. Did you at that time make any attempt to find out what the average revenue was, say per car, or per ton-mile, or anything at all of that sort?

A. In this traffic study, we do not or did not take the

revenues, we took the total tons that were moving through the ports, which is what we agreed would be furnished in this presentation.

As far as revenue is concerned, the revenue per car, they were shown in my exhibit 1, I believe it is, where we figured earnings per car-mile and per ton-mile, on representative movements.

Q. But you made no attempt to get any over-all average as such?

A. An average.

Q. Yes.

A. No, sir.

Q. In your exhibit MLM-2, on page 19 you show a total moving for export from differential territory of 3,303,000 tons for the representative year August 1, 1955 to July 31, 1956, is that correct, sir?

A. 3,303,448. That is correct, sir.

Q. I have 499, page 19.

A. The correct figures for page 19 are 67,749 cars, 3,303,448 tons.

Q. Thank you.

And on page 85, I think you show a total of import ton-
[fol. 459] nage to CFA—

A. 33,056 cars, 1,644,844 tons.

Q. So that the total moving to and from CFA, via the Port of Baltimore would be the sum of those two, 4,948,000-some odd, right?

A. That would be it.

Q. And to and from New York, I believe your study—do you have that figure available, sir, what is the total moving to and from New York during the same period?

A. For all lines.

Q. To and from—

A. I do not know what the total is for all lines.

Q. I thought somewhere in your evidence, in your testimony—

A. Do you mean for just differential territory, as reported for your lines and ours.

Q. Yes, in the composite case.

Exam. Boat: That is on your MLM-5, is it not?

The Witness: I believe that is in MLM-5.

Exam. Boat: That does not show a total.
The Witness: You are speaking of export now?

By Mr. Myskowski:

Q. Export and import, sir, total through New York, your lines and the other lines.
A. Well, the total export from differential territory for all lines, New York was 2,393,045 tons.

Exam. Boat: Where do we find that, Mr. Mollman?
[fol. 460] Mr. Myskowski: Answer the question.
The Witness: I found that on page 12 of exhibit MLM-3.

By Mr. Myskowski:

Q. And the total imports, sir?
A. The total imports for New York, 645,792.
Q. So that roughly there were about six million tons moving to and from CFA territory via Baltimore and 3 million tons via New York, is that correct, sir?
A. If you do not exclude the bulk traffic, yes.

Mr. Myskowski: Yes, sir. Thank you. That is all.
Exam. Boat: Is there any further cross examination? Any redirect?

Redirect examination.

By Mr. Langdon:

Q. Mr. Mollman, in the selection of these traffic movements—I beg your pardon, I forgot you.

Cross examination.

By Mr. Miller:

Q. Mr. Mollman, turning to your page 22 of your statement, if you were to establish import-export rates based upon mileage, I suppose your differentials would have to be on the basis of that lower set of figures, is that right?
A. If you will observe the 283 hundred formula of rates, that would be the average.

Q. In other words, that would be the mileage basis if you did it on a mileage basis, right?

[fol. 461] A. Strictly miles, that is correct.

Q. So, as I understand it, your proposed differentials are not to be justified on a mileage basis, is that right?

A. We are not proposing any change in the differentials. All we are asking is the observance of the recognized differentials.

Q. Do I understand, then, that your only justification for your proposal is that it is the same as we have had for a good many years?

Mr. Langdon: What proposal?

The Witness: We have not proposed anything.

By Mr. Miller:

Q. Haven't you proposed some reduced rates to restore the differential?

A. To maintain the differential.

Q. Well, now, what justification is there for that maintenance, then?

A. Competitive necessity at the Port of Baltimore.

Q. I see.

Why did you pick three cents, for example?

A. That is the differential that has been in existence for some 75 or 80 years.

None of that differential, New York still has got the biggest share of the traffic.

Q. Is that your only or principal basis for the amount of the differential?

A. If we were to take into consideration all of the factors, [fol. 462] and I am stating my personal opinion here, we should have a wider differential than the three cents that exists today.

Q. The only reason you picked this three cents is the fact it had been effective 75 or 80 years?

A. We are willing to accept it and try to live under it—continue to live under it.

Q. Is that what might be called rate-making, what was good enough for grandpa is good enough for me?

A. I found grandpa to be a pretty good guy sometimes.

Q. It is not on mileage, it is not on cost, is that right?

A. I told you before—I did not tell you, but I said here before, we were astounded at the cost of operation in the Port of New York, and our management is taking one long look at those figures and how long we can exist under them.

Q. That three cents is not related to the cost you found, is it?

A. That is competitive. It is related to a number of things. I think if we go back to the history of it in the Cooley report it says so.

Q. That was 80 years ago, right?

A. He was a supreme court judge. I think this—he knew what he was talking about when he said it considered the principles.

Q. They were talking about costs 80 years ago, right?

A. They said cost was a factor. The service involved, [fol. 463] the competitive angle, and the rate structure as a whole.

Q. But you are basing this differential on the costs as they existed 80 years ago, right?

A. No, I said we are willing to live under that differential. We are willing to try to live under that differential. We are not advocating a change in it.

Q. But does that three cents bear any relationship to present-day differences in costs, as you say you found them?

A. If we relate it to costs, I would say that differential would have to go up to 8, 9 or 10 cents, at least.

Q. Are you of the opinion that these rates should be also based on difference in costs—this differential?

A. I think it is a very important factor. I will tell you this, when I am looking at a rate and I am asked to propose a rate, one of the first things I look at is how much does it cost to handle?

If I find we are not able to make a profit out of that, all of the other considerations are out.

Mr. Miller: Those are all the questions I have. Thank you.

Exam. Boat: Have you finished, Mr. Miller?

Mr. Miller: Yes.
Exam. Boat: Thank you.
Mr. Colgren: May I continue with my cross examination?

[fol. 464] Cross examination.

By Mr. Colgren:

Q. Mr. Mollman, as I recall it, I believe you indicated you participated in export-import rates through the Gulf?

Mr. Macleay: I cannot hear.
Mr. Colgren: I am sorry. I forget myself.

By Mr. Colgren:

Q. Mr. Mollman, as I understand it, in your previous testimony you said you participated in export-import rates through the gulfports.

A. We are parties to the export rates through the Gulf, from a portion of our territory, the same as the New York Central.

Q. I.F.A. Territory, as I understand it?

A. That is right. The Todd Knott award territory.

Q. Mr. Mollman, you also participate, I believe, in traffic, export and import traffic moving through the Canadian ports?

A. Yes, sir.

Q. Mr. Mollman, you just mentioned the Todd Knott basis. Can you tell me what that differential is as between the North Atlantic ports and the Gulf ports?

A. The basis, as I recall it, is so—it is on European traffic, the rates to New Orleans, from Chicago, if you please, with the 6 cents under the rate from New York, 3 cents under the rate from Baltimore, the rates to other territories it is 3 cents under the rate from New York or the Baltimore rate.

[fol. 465] Exam. Boat: That is on imports?
The Witness: That is on import business.

By Mr. Colgrem:

Q. On what class is that, Mr. Mollman?

A. I am going by memory. I believe it is all classes.

Q. If you will accept my statement, that is on 6th class.

A. Is it on 6th?

All right, I will accept that.

I might say, while we are talking about the Todd Knott, that in this thing we have got to consider very seriously the fact that the rates in differential territory and the rates in southern territory are related under that Todd Knott thing, and what is done here can affect all the rates.

Q. Well, Mr. Mollman, do you have any recollection of what that Todd Knott differential is at first class?

A. No, I do not. I have to go back to memory on that.

Q. Could you refresh your recollection—without violating your counsel's feeling, by reciting the differentials for the first six classes and see if you agree with them?

They were, as you recall, based under New York.

A. That is right.

Q. Does this strike your memory as correct?

18 cents first class, 18 cents second class; 12 cents third class, 8 cents 4th class, 6 cents 5th and 6th classes?

A. Those sound correct to me.

Q. Yes, sir.

[fol. 466] Are you familiar with the fact that the differentially-published export and import rates through the Gulfports are the same from I believe it is Pensacola on the one hand to Brownsville, Texas on the other?

A. Yes. I believe they go all the way to Laredo, Texas. What you are proposing here is you would have the same rate for 2,000 miles or approximately that as we have for four hundred or five hundred miles.

Q. Are you also familiar with the fact that the distance from Chicago to Mobile is 837 miles, or if not familiar, will you accept my statement?

A. I think that is correct. I think New Orleans is 890 miles as against the 800—the 890 miles Chicago to New York.

Q. That is right.

Mr. Mollman: Will you accept my statement that Corpus Christi, Texas, is 1260 miles from Chicago?

A. I think that is approximately right.

Q. From Cincinnati, where the Todd Knott differential, or rather, a point from which you participate in export and import traffic through the gulfports, Charleston, South Carolina, is 704 miles?

A. That may be true. Nevertheless, we had no control over those rates. Those rates were set primarily by the Illinois Central and the GM & O in conjunction with this [fol. 467-469] Todd Knott we had to meet a competitive situation. We did not set those rates.

When we could participate in the business and make some money out of it, we participated in it. But when we can't make any money, that is another animal.

Q. Yes, sir.

Exam. Boat: Is it convenient to stop now?

Mr. Colgren: I was about to say that is all I have.

Exam. Boat: Very well.

Mr. Langdon: Sir, before you adjourn, I take it you would probably desire to defer until tomorrow this matter of the Boston Report, and our request for a subpoena which I am prepared now to talk about, but which I guess, in light of the adjournment, we can defer until tomorrow.

Exam. Boat: Very well.

I am prepared to issue the subpoena when you have the information.

Mr. Langdon: I have the information now, and I have all the data, but I think we can defer it until tomorrow. There will be argument about it, I am sure.

Exam. Boat: You say there will not be an argument about it?

Mr. Langdon: I say there will be an argument about it.

Exam. Boat: There will be an argument?

[fol. 470] Mr. Langdon: I suppose so.

Exam. Boat: We will be here tomorrow.

Mr. Langdon: That is what I mean.

Exam. Boat: We will adjourn until 9:30.

Mr. Langdon: Is Mr. Mollman excused, sir?

Mr. Welch: No.

Mr. Keenan: No.

Exam. Boat: All right.

We will adjourn now until 9:30 tomorrow morning.

(At 4:35 p.m. the hearing was adjourned until 9:30 o'clock a.m. February 20, 1958.)

[fol. 471]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I & S Docket No. 6615

FSA Docket No. 32204

[Title omitted]

Met, pursuant to adjournment, at 9:30 a.m.

Before: Marion L. Boat, Examiner.

APPEARANCES:

As heretofore indicated.

ADDITIONAL APPEARANCES:

John F. Toppeta, 112 State Street, Albany, New York, appearing for State of New York-Department of Commerce, in Support of Respondent.

David E. Pinsky, 703 City Hall Annex, Philadelphia, Pa., appearing for City of Philadelphia, in Support of Protestants.

[fol. 473] Proceedings

Exam. Boat: Come to order, please, gentlemen.

Mr. Bongartz: Mr. Examiner, relative to the adjourned date—

Exam. Boat: Yes.

Mr. Bongartz: I will say, I called Mr. Heywood last night and he will be available on the 25th of March.

Exam. Boat: Very well, thank you.

Has the cross-examination been completed, or is there still some?

Mr. Keenan: Mr. Examiner, I had a couple of questions of Mr. Mollman, please.

MELVIN L. MOLLMAN a witness, having been previously sworn, resumed his testimony as follows:

Cross Examination (continued).

By Mr. Keenan:

Q. Mr. Mollman, can you refresh my recollection, please, or maybe tell me something I never did know, how much grain during 1956 was exported through the Port of Baltimore?

A. 1956 is in the traffic study, sir.

Q. Do you happen to remember, approximately?

A. No. I will have to look at the exhibit.

Mr. Henry: Look at page 7. See if that is it.

The Witness: From differential territory through the [fol. 474] Baltimore-Port of Baltimore, 870,981 tons of wheat, 896,356 tons of corn, 39,537 tons of oats, 86,000 tons of barley and rye, 21,856 tons of soya beans.

By Mr. Keenan:

Q. Of the 800,000-odd tons of corn that you just mentioned, Mr. Mollman, is some of that, so far as you know, corn which is sold by the Commodity Credit Corporation to foreign buyers or foreign delivery?

A. I am not familiar with who sold it. I do not know who sold it. I would assume there was a good portion of that corn that the Government had a hand in selling.

Q. That would have been the Commodity Credit Corporation?

A. Yes, we had abnormal conditions for disposal of grain for a number of years since the war.

Q. The Government corn you referred to would have been Commodity Credit Corporation corn, right?

A. I would assume a good portion of that was theirs.

Q. By a "good portion," would you and I mean the same thing, something in excess of thirty or forty per cent?

A. I could not state the percentage. I would say there was a good proportion of that corn that was government corn.

I do not know who owned it and who sold it exactly. I can only go by my general impression of the situation.

Q. Your exhibit MLM-6, to exhibit I believe it is 50, page 3, refers to export carloads unloaded except coal and coke and other than grain.

[fol. 475] A. That is right.

It is a regular PT-6 report, you had two of them, one excluded grain and one had the grain. This is the one that excluded the grain.

Exam. Boat: I suggest the heading be changed to read "Except Coal, Coke and Grain," would that be correct?

The Witness: That would be correct.

By Mr. Keenan:

Q. Between 1939 and—withdraw that.

I one were to refer to page 3 of your exhibit MLM-6, that we have just been talking about, Mr. Mollman.

A. Yes, sir.

Q. From 1939 until 1956 of Boston and Hampton Roads, which would appear to be the more vigorous competitor with Baltimore?

A. How do you mean the more vigorous competitor? They are all vigorous.

Q. Which is the more successful in obtaining traffic which otherwise Baltimore might handle?

Mr. Hanifin: If the Examiner please, I am going to object to that question because it assumes there is some common denominator that the traffic might go through Baltimore or might go through Boston or might go through Hampton Roads. There is no basis in the record for any assumption as that. If counsel is only inquiring as to actual statistics, that is one thing, but his question had a little bit [fol. 476] more than that which was implicit in it.

Mr. Keenan: I claim the question, Mr. Examiner. Its relevancy seems to me clear.

Exam. Boat: The objection is overruled.

By Mr. Keenan:

Q. Do you have the question in mind, Mr. Mollman, or would you like to have it read?

A. Yes, I have the question in mind.

Well, the figures as shown on page 3 of my exhibit MLM-6 shows that Boston, if we added the totals through all the 17 years, that it had less tonnage than Hampton Roads.

Q. Well, is it a fair conclusion from that fact that Hampton Roads has been appreciably more successful than has Boston in obtaining traffic which otherwise might have gone through the Port of Baltimore?

A. They got more tonnage.

Q. You would rather not answer the question I asked, Mr. Mollman?

A. I do not know what you mean by "successful," in getting this tonnage. They had this tonnage. I do not know the destinations of this, other than it went in a differential territory. I do not know the movements of that from that standpoint to analyze these from each year as to what is meant by success in getting tonnage.

Q. When you speak of destinations, do you and I both have in mind these are export carloads?

[fol. 477] A. To origins—I will correct that. To origins rather than destinations.

Mr. Keenan: I haven't got any further questions.

Exam. Boat: Does that complete the cross?

That seems to be all.

Mr. Langdon: I have one question on redirect.

Redirect examination.

By Mr. Langdon:

Q. Mr. Mollman, you were asked yesterday concerning the basis of selection of those traffic movements taken from your traffic study which were incorporated and priced out in Mr. Heywood's cost exhibits.

Would you please state the basis of selection used in that respect?

A. Yes.

We selected commodities that moved in volume through the ports, not necessarily through all of the ports, but moved through the ports and that this is the traffic that is involved, this is the traffic that New York is apparently trying to get.

For example, on the ball clay, the china clay, there were 33,621 tons moved through the Port of Philadelphia. Some of the principal destinations—we then went to select destinations which would be representative, we felt would be representative in showing the costs, and destinations we found were New Castle, Pennsylvania, Barberton, Ohio and Robinson, Illinois.

[fol. 478] We found that 79 cars moved to New Castle, 61 moved to Barberton—61 cars to Barberton, 61 cars to Robinson, Illinois, and the weights were 3950 tons, 350 tons, and 3000 tons, 50 tons per car.

So that was one that was used, and we determined the costs on that, or they could use that in determining the costs of moving that like tonnage to any one of the ports.

We took wallboard. There were 2499 tons moved through Baltimore. That moved to Dayton, Cleveland, Massillon, and Chicago.

So we made similar comparisons there. We took iron and steel where 353,000 tons moved through Baltimore, 580,000 tons moved through New York. On the steel for export we used Steubenville, which is the origin of tinplate, one of our major producing points, 343 cars, steel sheets from Cleveland, steel plates from Chicago, steel plates from Detroit. We covered it or blanketed the territory and gave you a relative picture. We followed that all the way through. Take wheat flour, 40,000 tons moved through New York.

We used Indianapolis as an origin, where from our billing 117 cars originated. How much originated on the New York Central, since that is a New York Central point, I do not know.

But, that was a representative milling point of that tonnage, and that was the basis of all of these selections all [fol. 479] the way through.

Q. Mr. Mollman, in that respect, did you select commodi-

ties that were heavy-loading, medium-loading and light-loading?

A. We did. The range was all the way from 14 tons per car to 50 tons per car—or a little more than that. We had food products, some of this material moved in refrigerator cars, some moved in open-tops, some moved in box cars.

Q. You also selected commodities by the type of equipment employed.

A. That is correct.

Q. I gather from your prior answer that, from the point of view of points within the territory, that there again you regarded your selections as representative?

A. Yes, sir.

Mr. Langdon: That is all.

Exam. Boat: Is there any further redirect?

Mr. Langdon: No, sir.

Exam. Boat: Is there any recross?

Mr. Myskowski: Could we have a couple of questions?

Recross examination.

By Mr. Myskowski:

Q. Mr. Mollman, are you very familiar with the way Mr. Heywood developed his costs at all?

A. Oh, no, I know nothing about costs, except the result.

Q. I see. You say what you used was traffic which moved [fol. 480] through all three ports in your representative sample.

A. I said I took traffic that loaded in volume, some of it may have only moved through one port. Some of it may have moved through all three ports or just two ports. I take that traffic so they can price it out moving through any one of the ports if it moves through that port eventually.

Q. On the basis of your experience, would you be able to say that different traffic costs different amounts to move through a port?

A. I am not a cost man. I prefer that a cost man answer it. I am not in position to answer. I don't know how they arrived at those costs.

Q. Well, if it did, sir, and you took traffic which was moving to Philadelphia, and you took costs which were based on totally different traffic, and applied those costs to traffic which was moving through Philadelphia, the result wouldn't have much meaning, would it?

Mr. Langdon: I object to the question.

The Witness: That is still a cost question. I am not able to answer it, sir.

By Mr. Myskowski:

Q. You made no attempt, then, to try to make for any New York traffic which moved in volume through New York or Philadelphia traffic which moves in volume through Philadelphia and for Baltimore traffic which moves in volume through Baltimore. Costs would be based on those, [fol. 481] obviously.

Mr. Langdon: I said yesterday, Mr. Myskowski, if you have some representative movements you would like to price-out, we would be—

Mr. Foley: This is out of order. There is no objection pending. This is a speech, Mr. Examiner.

Mr. Langdon: Just a minute, if there is an attack upon the representative character of this cost study, in its representative character, we would like the other side to provide us with movements which we will price out, we will go further and ask their cooperation in pricing them out.

Mr. Moerman: This is a wholly improper attempt to prevent an attack upon the representations of this study which is now under way.

Now, Mr. Examiner, I ask that you permit this attack to continue its successful course.

Mr. Langdon: Mr. Examiner, I take it, it is the object of this proceeding to develop the facts. That is, I suppose, the objective. In the development of these cost factors we have no cooperation from the other side, we are doing absolutely the best we can with the material that is within hand, based on our figures, our traffic study. We served New York representatively, and we have done exactly the best we can. If the other side does not want to cooperate

and supply us with further information on which to make [fol. 482] this, as they claim, more representative, then of course we are at an end.

Mr. Moerman: There is still no objection pending. It is a highly improper statement.

Mr. Foley: May that go out, Mr. Examiner? That is wrong.

Mr. Moerman: It must go out.

Exam. Boat: It is not testimony in the case.

Mr. Moerman: It is bologna.

Exam. Boat: Mr. Mollman, here is submitted, as I understand it, as a witness offering a traffic study. He is not presented as a witness to support any of the costs.

Mr. Myskowski: Yes, sir. You see we are in this position, Mr. Examiner.

Mr. Mollman is the one who presented the so-called representative movement, but he is not the one who made the so-called cost study. When we get Mr. Heywood, he will say I know nothing about the movement, they were given to me by Mr. Mollman.

We have to tie those in. They are taking traffic which moves through Philadelphia and Baltimore and pricing it out on the basis of what they claim to be New York costs. They made no attempt to, if they are going to consolidate all of the traffic, I would think they would have consolidated all the costs and made it average that way. But it [fol. 483] seems ridiculous basing a certain amount of cost on traffic moving through New York and showing the traffic moving through Philadelphia would not be compensatory moving through New York.

Exam. Boat: That is not true of all the commodities, is it, Mr. Myskowski?

Mr. Myskowski: No, sir, but if you look at them, a large proportion are bulk commodities having a lower cost moving through the other ports, and do not move through New York, and we have to develop this through Mr. Mollman since he is the one who claims to have submitted the list of commodities to Mr. Heywood.

Mr. Langdon: Well, I suggest the questions be deferred until Mr. Heywood is on the stand. Between now and the next hearing there will be distributed in advance of the

next hearing, application of this cost to practically every movement in the traffic study. There will be no opportunity to question its representative character.

Exam. Boat: Do you have any further questions of Mr. Mollman?

Mr. Colgren: I have one additional question, if you please.

By Mr. Colgren:

Q. Mr. Mollman, in answer to one of my questions yesterday you said one of your first considerations when asked to make rates was whether or not the rate would make [fol. 484] money for your railroad.

What is the yardstick that you used to determine whether or not the rate will be profitable as you described it?

A. We have a cost department in our railroad, and when I make a comparison of the rates that happen to be requested with other rates, which I may consider low, I will ask the cost department to tell me what the costs to handle that traffic are.

Q. What do they supply you, a ton-mile or—

A. They give me the cost figure. The cost to us is so much to handle from Baltimore to Chicago, the terminal costs at Baltimore, the terminal costs at the other end.

Q. Yes.

Do they supply that to you on an out-of-pocket basis?

A. An out-of-pocket—I usually ask for the out-of-pocket because, when you get down to the low rates there may be other things that influence the rate, and I see if we can equal that out-of-pocket cost on rates.

If you get below that, you are just out of luck, that is all.

Mr. Colgren: That is all. Thank you very much.

Mr. Welsh: No questions.

Exam. Boat: All right, I believe we have completed the examination.

Mr. Langdon: Mr. Examiner, I have an understanding [fol. 485] with Mr. Colgren that the next witness will be General Stratton. He is down the list, three from the bottom, on page 4.

Exam. Boat: We will excuse Mr. Mollman.

(Witness excused.)

Mr. Langdon: May I have Mr. Mollman's exhibits received in evidence, sir?

Exam. Boat: Yes, sir, they will be received as exhibit No. 51.

(Exhibit No. 51, Protestant, Witness Mollman, was received in evidence.)

Exam. Boat: Is that agreeable to the parties to have Mr. Stratton follow Mr. Mollman?

Mr. Foley: Mr. Examiner, I would like to have marked with Mr. Langdon's permission, for identification, a statement in behalf of New England Industrial Traffic League in Support of Equalization. The witness—this is a verified statement—this is a statement, the witness is here and could I call him and have him sworn?

I have distributed the statement among the parties.

Exam. Boat: Very well.

Mr. Foley: Mr. Williams.

I am sorry, it is a verified statement. So, unless someone wants him for cross-examination—that has been marked as 51?

Exam. Boat: That will be identified as No. 52.

[fol. 486] (Exhibit No. 52, Witness Williams in Support of Respondents was marked for identification.)

Mr. Langdon: He is here, isn't he?

Mr. Foley: He is here.

Exam. Boat: Is there any desire to cross examine Mr. Williams?

Mr. Langdon: Yes, I thought you were going to produce him.

STEPHEN B. WILLIAMS a witness was sworn and testified as follows:

Direct examination.

By Mr. Foley:

Q. Mr. Williams, will you please state your name and address for the record?

A. My name is Stephen B. Williams.

I am president of the New England Industrial Traffic League.

My business address is Jones-Lamson Machine Co., Vermont.

Q. Mr. Williams, is the statement which has been marked for identification exhibit No. 52, is that a statement which was prepared by you?

A. That is right.

Q. Are the matters therein contained true and correct to the best of your knowledge and belief?

A. Correct.

Mr. Foley: You may examine.

[fol. 487] Cross examination.

By Mr. Scully:

Q. Mr. Williams, does the New England Industrial Traffic League have members from the State of Maine?

A. Yes, we do. Several of our best members are from there.

Q. Are there any of the railroads members of your organization?

A. No.

The League represents industry, only. There are no carrier members.

Q. Have you had any specific requests from industries in Maine to participate in this proceeding?

A. No, the action that we have taken—that is, my appearing here and filing this statement, is a result of the

fall meeting of the League held in September, 1957, at which we agreed to participate in the case.

Q. Now, at the end of your statement, you say that in this statement we have emphasized the Port of Boston, but that which we have said applies with equal force to all New England ports.

Do you know what the rate situation is at Portland as far as export and import rates go?

A. Yes, I understand that the Port of Portland has a somewhat unique situation, as I understand it, you have so-called differential rates on two commodities, china clay and woodpulp.

[fol. 488] Is that correct?

Q. You are the witness.

A. That is my understanding.

I will say this that at the fall meeting of the League at which we took this action, one of our very respected members, Mr. R. L. Travis, who is traffic manager of S. D. Warren Company, stated that he would probably have to take a position which was contrary to the League's position in this case because of the fact that his company is located in Maine and they are interested in the Port of Portland.

On the other hand, of course, the League represents all of New England and we have felt we should take a position on the majority of the ports in New England.

Any League member is entitled to take an independent action, he does not have to follow the League's action.

Q. In other words, although one member who represented an industry in Maine advised you that he was opposed to the elimination of the differential, you felt without specific authority from any other industries in Maine, that you would support the position of Boston, is that correct?

Mr. Foley: That is not what the witness said.

The Witness: That is what we say here. We say we will support the position of all the New England ports. We are supporting not just the Boston, but all the ports in [fol. 489] New England, Bridgeport, New Haven, Providence, New Bedford, wherever there is traffic moving."

By Mr. Scully:

Q. And are you speaking of Portland as well?

A. Well, as far as Portland is concerned, I think we should say that we feel that inasmuch as there are only two commodities involved, that we should not allow two commodities moving through Portland to influence the traffic, all the commodities that are moving through the other New England ports.

Q. And it is your understanding, then, that the import differential at Portland applies only to two commodities?

A. That is my understanding, yes, sir.

Q. Did you give any consideration to what effect it might have on the Port of Portland if the differential was eliminated?

A. Certainly the League has to take those things into consideration.

It was discussed at the meeting. As I say, as I pointed out before, Mr. Travis raised the question but our discussion was very friendly. Mr. Travis did not press the point.

The League would have to follow the majority vote of its members. We have over 200 members representing several hundred industries, in New England.

Q. Would it be a fair statement to say that your organization represented members all over New England, so you felt the Port of Boston was more important than the Port of Portland?

[fol. 490] A. I think, certainly, volumewise, the Port of Boston is a much larger operation than the other ports, but once again I have to say as far as the League is concerned, we are interested in representing the over-all interests of New England business, and their ports, whether it is Boston, Providence, Portland, or New Haven or Bridgeport, any of them.

As I said before, the League's action was taken by majority vote, in fact the vote—there were probably 60 or 70 men there at the meeting representing all of New England, and so far as I know there was only one dissenting vote.

Q. How many of the 60 or 70 men represented industries in Maine?

A. I cannot recall that. I would have to go back to the roster of attendance which we have, but I do not have it

with me. There are usually several there from Maine, because we have some pretty active industries up there and they are active in the League.

Mr. Scully: I have no further questions.

Mr. Langdon: I have one question, sir.

Cross examination.

By Mr. Langdon:

Q. Mr. Williams, are you familiar with a report of the Advisory Council for the Port of Boston Commission submitted to the Governor of Massachusetts under date of December 2 and then as supplemented under date of De [fol. 491] cember 31?

A. I think I recall hearing something about a report, but I know nothing about it. I know nothing about the details of the report or what it contains.

Mr. Langdon: Mr. Examiner, that brings up again this question of this Advisory Council Report to the Port of Boston Commission that was referred to yesterday.

Mr. Foley: Mr. Examiner, I would suggest we proceed with this witness until cross examination is completed.

Mr. Langdon: I have no further question of the witness.

Mr. Marbury: I have a question.

Cross examination.

By Mr. Marbury:

Q. Mr. Williams, you are interested in this matter on behalf of industries as importers and exporters, is that right?

A. That is right.

Q. Do your industries—your industries are allocated, I take it, in the New England area?

A. That is right, the six New England states.

Q. They do import and they do export?

A. That is correct.

Q. Through what port do those industries ship their exports? Speaking generally?

A. Well, I think generally speaking those in Northern New England tend to favor the New England ports, and I [fol. 492] think those in Southern New England, particularly our Connecticut friends no doubt are pretty heavy users of the Port of New York.

Q. Isn't it true a number of the industries of Massachusetts also use the Port of New York?

A. I have no facts on which to base that.

I want to say, I can't make any intelligent comment on that. I can only say that any opinion I would express would be personal opinion only.

Q. Haven't you made a statement here New England industries are on the haunts of dilemma, either they take advantage of the lower transportation expense at Boston, or put up with the inferior frequency in sailings and the usually longer time in ocean traffic, or they pay the higher rail costs involved in using a port other than Boston in return for ocean time advantage?

I ask if you are speaking of New England industries? Isn't that true of New England industries generally?

A. I think that is true. As I stated before, some of your northern shippers in the proximity to the northern ports, and because of inland transportation being cheaper, use the northern ports to the extent adequate sailings are available, but there is no question in my mind but what the greater volume of export is going through New York.

Q. Through New York?

A. Yes, sir.

[fol. 493] Q. New York has no differential advantage over Boston?

A. That is correct.

Q. Does any of your import or export business—any substantial amount of it—move through Baltimore, Philadelphia or Hampton Roads?

A. No, I would say very little of it would go south of New York.

Q. South of New York?

A. That is right.

Q. So the fact is with equality with New York—not equality, of course, but without any differential favoring New York and actually with a lower rail rate because of

the nearer distance, still New York is drawing most of your export and import traffic.

Mr. Foley: Mr. Examiner, I object to the form of that question, that is purely argumentative. He has gotten the facts he wants. This is just the argument now. The conclusion follows from what has been testified here. It is just the argument.

Mr. Marbury: If it is conclusion, I will take that.

The Witness: I think our statement there points out the facts pretty conclusively. You merely restated some of them, and that is that we say here in the second paragraph, page 2, that—we point out that Boston is not obtain-[fol. 494] ing its fair share of export and import freight moving to and from interior points—that is, beyond New England. In other words, I think it is safe to say that Boston is depending pretty heavily on the other New England ports. They are depending pretty heavily on traffic originating or destined to points in New England. That is not sufficient to support the sailings that we need to attract more tonnage to the port.

By Mr. Marbury:

Q. What makes you think that Boston would attract any business from Central Freight Area, CFA Territory, as against the New York when it can't even hold its own business in its own back yard?

A. I can't speak for the Port of Boston on that point.

Mr. Marbury: That is all.

Cross examination.

By Mr. Hanifin:

Q. Mr. Williams?

A. Yes, sir.

Q. I gather the burden of your testimony is that traffic moving through Boston is not as great as it should be?

A. Well, yes, that is the position we take.

Q. And other New England ports for which you speak, apparently, except Portland—is that correct, sir?

A. Except Portland?

Well, I would say Portland has an advantage, as I understand it, only on two commodities. So on other traffic they [fol. 495] would be in the same position as Boston or any other port.

Q. I also understand, sir, in response to a question by Mr. Marbury, you stated you knew of no traffic moving from the New England area to what had been characterized by New York as Baltimore, Philadelphia, or Hampton Roads, is that correct, sir?

A. That is to the extent of my own knowledge. That applies principally to our company.

Q. Then the competitive traffic which New England is losing must be moving through New York; aren't you forced to that conclusion, sir?

Mr. Moerman: That is speculation, Mr. Examiner.

Mr. Hanifin: Permit the witness to answer the question.

Mr. Foley: Mr. Examiner, that is argumentative. When he says "must", it is obviously argumentative.

Mr. Moerman: He does not know, Mr. Examiner. Let's not have him speculate.

Mr. Hanifin: Is Mr. Moerman putting words in the witness' mouth. The witness did not say he does not know.

Mr. Moerman: I object on the grounds the witness does not know and the answer would be a speculation.

The Witness: I can speak with authority only for my own company.

[fol. 496] Mr. Hanifin: Then you do not know anything about the import and export business of the people for whom you speak, the National Industrial Traffic League, sir?

Are you saying that you are unqualified to speak for them with respect to import and export traffic?

The Witness: Let me get down to the facts and figures. I don't have any figures to support this at this particular time, but if you want an answer to the question of whether it must move through New York, I merely refer again to the premise that we take in this statement. As I see it you have two situations.

On the one hand you have the New England concerns who are exporting and importing traffic. They are tend-

ing to send a majority of the freight to New York as against Boston, if you want to put it that way. Why? For the simple reason that the sailings from Boston—

By Mr. Hanifin:

Q. Excuse me. I am sorry.

A. Because the sailings from Boston, as we point out here, we are frank to say, we say, for example, in the third paragraph on page 2, "Our New England industries are thus on the horns of a dilemma. Either they take advantage of the lower transportation expense at Boston and put up with the inferior frequency of sailings and the usually longer time in ocean transit, or they pay the higher rail costs involved in using a port other than Boston in return [fol. 497] for ocean time advantage."

Now, that applies to my company, and I think it is a fair statement for New England as a whole.

Q. All right, sir.

Now, right at that point—

A. Yes, sir.

Q. Have you finished?

A. Yes.

Q. It was a long answer to a short question, sir.

A. Here is the rest of it. As I pointed out before, prior to that, we make the point that New England ports cannot develop enough tonnage from New England industry with the sailings you have now, they have to go beyond New England to develop more tonnage to develop sailings from Boston and the other ports. That is our position, it is very simple.

Q. But is it not true your statement is directed to the fact that the competition that Boston meets today in attracting traffic—Boston as a port, I mean—is with New York?

You speak of more frequent sailings, inferior sailings from Boston.

Now, isn't the comparison made by you as between Boston and New York?

A. Well,—

Q. Just yes or no, sir.

[fol. 498] A. No, I am not comparing just the Boston.

I am citing that as an example, but I also say—

Q. Now, sir, what do you have in mind? Answer specifically the ports you had in mind when you talked about sailing superior to those that moved through Boston?

A. Well, I will add to New York, I would say also Baltimore and Philadelphia have better sailings, and I assume there is a certain amount of business from New England that goes there.

Q. That may be true, sir, but you have already told me, haven't you, that you know of no traffic which is moving to that territory?

A. Personally, no. But I am sure you can develop plenty of information on that score if it is needed. I would be very happy to do it.

Q. But you are at the present time unable to point to even so much as one shipment—

Mr. Foley: Mr. Examiner—

By Mr. Hanifin:

Q. —which has moved to the out-ports as opposed to—

A. I did not come here prepared with that sort of information, sir. I came here to present this statement which is our position.

Now, if further facts are required from New England industry, the League will be happy to cooperate in developing that information.

[fol. 499] I have not got it with me.

Q. Just one more question, sir.

A. Yes, sir.

Q. What study have you made of the frequency of sailings from Hampton Roads?

A. I haven't made any studies.

Q. From Baltimore?

A. Not personally, I have not made a study.

Q. From Philadelphia?

A. No, I have no study with me to present.

Q. Do you have any knowledge as to the frequency of sailings from New York?

A. As to the frequency from New York?

Q. Yes, sir.

A. Yes, because our concern happens to use New York in export unless we can get good sailings from New—from Boston.

Q. That is interesting. You export materials that you produce?

A. That is right.

Q. Do you use New York?

A. Oh, yes, and we use Boston.

Q. Where is your plant located, sir?

A. In Vermont.

Q. In Vermont?

A. Yes.

Q. How far is that from New York, sir?

[fol. 500] A. About 230 miles.

Q. In going to New York, does it by-pass Boston, is Boston nearer to your plant?

A. Oh, yes.

Q. Does Boston—is Boston nearer to your plant?

A. Yes, sir.

Q. Are you familiar with the rail rates to Boston and to New York?

A. Yes.

Q. What is the rail rate on the product which you export?

Mr. Moerman: Just a minute, Mr. Witness. I want to object on the ground that all of the testimony which has been given by this witness for the past few minutes deals with movements between points in New England and North Atlantic ports. That issue is not in this case. I think that there is much too much material of that type already in the record.

This is a CFA case, and I object to any further examination along this line.

Mr. Bongartz: I move the witness' statement be stricken, because it is clear from his statement that he is depending in large part, if not in most part, on this local situation.

In view of counsel's statement I ask the statement be stricken.

Mr. Moerman: I take it his testimony is he needs traffic [fol. 501] from CFA to improve the New England port's position, is that right?

The Witness: That is the position we take, and that is fully set forth in the statement.

Mr. Marbury: The testimony also is he cannot get it because it will go to New York.

Mr. Foley: That is not the testimony, Mr. Examiner.

Mr. Moerman: He did not say that.

Mr. Marbury: He did, too.

Mr. Bongartz: I think we have a question on the record, Mr. Examiner.

Mr. Moerman: We have my objection.

Mr. Marbury: That is the same as my statement, they are worth about the same.

Mr. Moerman: Yours is worth nothing.

Exam. Boat: As to the rates, I do not know that it is the proper subject of cross-examination.

Mr. Hanifin: If the Examiner please, I would say that objection comes without very good grace from the counsel for the Port of New York Authority. I remember with distinct clarity that Mr. Laux' testimony was the only factor that influenced the movement of import and export freight was rates. I think that is a subject of cross examination, due to the assertion along that line.

Mr. Moerman: I am also counsel for Metuchem Chamber.

[fol. 502] Mr. Bongartz: This dilemma he talks about talks about higher rail costs.

Exam. Boat: Let us not argue, Mr. Bongartz, I don't think we should argue.

Mr. Hanifin: May the question be answered, sir? Have you ruled on Mr. Moerman's objection?

Exam. Boat: Yes.

Mr. Hanifin: You have? What was the ruling?

Exam. Boat: I sustain the objection.

Mr. Hanifin: You sustain his objection that I cannot inquire—

Exam. Boat: As to rates on particular traffic. He did not testify as to any particular traffic.

Mr. Macleay: He testified as to rates, Mr. Examiner.

Exam. Boat: Where did he testify as to rates?

Mr. Macleay: This "horns of dilemma" he talks about on page 2, either they take advantage of lower transportation expense at Boston or they pay higher rail costs involving use of other ports. Certainly counsel has a right to inquire as to the detail of a broad general statement.

Mr. Foley: The witness did say the cost to him was more in the way of rates to ship from Vermont to New York than to Boston, but what he was trying to do was to avoid that by having a chance for Boston to be competitive with CFA territory.

[fol. 503] Mr. Hanifin: Does the reporter have that statement on the record, please?

Mr. Foley: That is in the statement.

Mr. Hanifin: I am going to rephrase my question, if the Examiner please, and deal with the rate situation generally and not specific rates because I understand that was the subject of the Examiner's ruling.

Mr. Hanifin: Now, Mr. Williams, are you familiar generally with the rate situation which obtains from your plant in Vermont to Boston and New York?

The Witness: Certainly.

By Mr. Hanifin:

Q. Do you pay a higher freight bill by moving your traffic to New York?

A. I—

Mr. Welsh: Mr. Examiner, I will object to that on the ground this is entirely beyond the scope of this investigation, and the rates from New England or the costs from New England to any port are not involved. This is a CFA matter.

Mr. Macleay: Do I understand counsel is moving to strike all of this witness' testimony?

Mr. Welsh: I beg your pardon?

Mr. Macleay: I wondered if that is what he was doing.

Mr. Welsh: Our testimony dealt with CFA only.

Mr. Macleay: I am asking if you are moving to strike [fol. 504] this witness' testimony?

Mr. Welsh: That is not what I am talking about.

Exam. Boat: I overrule the objection. The witness may say—

Mr. Hanifin: Mr. Examiner, I have no further questions.

Mr. Walker: I have one question, Mr. Examiner. I want to ask about the traffic in differential territory.

By Mr. Walker:

Q. Did you hear Mr. Mollman say yesterday or testify there is over 500,000 tons of iron and steel articles moving from CFA territory to New York?

A. I was not here yesterday.

Q. Do you get any iron and steel articles on differential to New York or Boston?

A. Can we?

Q. Do you?

Mr. Foley: If you know?

The Witness: I do not know.

By Mr. Walker:

Q. Do you have the same rates from CFA territory to Boston as you have to New York?

A. I assume the rates are equalized between Boston and New York, that is right.

Q. But you do not know how much traffic you get today as compared with New York?

A. I can't answer that question intelligently, no, sir. I do not know that.

[fol. 505] Exam. Boat: Are there further questions?

You are excused.

Mr. Foley: May Mr. Williams' Exhibit be received as Exhibit 52?

Exam. Boat: The exhibit will be received as 52 in evidence.

(Exhibit No. 52 Witness Williams in Support of Respondents was received in evidence.)

Mr. Langdon: Mr. Examiner, if I may, I should like to return to the subject of this advisory council report, the report of the Boston Commission.

It comes to mind because of the testimony of Mr. Williams.

Under the laws of Massachusetts, Chapter 6, Section 53-A of the General Laws of Massachusetts there was apparently appointed or provided for an advisory council to investigate the activities of the Port of Boston. This Advisory Council apparently was to report or at least an agency of the Port of Boston Commission and its obligation apparently was to report to the Governor of the State.

Such a report apparently was made under date of December 2, and supplemented under date of December 31.

We have what we believe to be authentic copies—at least they were obtained directly—and I am asking now that [fol. 506] Mr. Foley who is, as I understand it, appearing in this proceeding as counsel for the Port of Boston Commission—and this is in the report of an advisory council to that same Port Commission—to cooperate with us in getting this report and its supplement authenticated.

This report is extremely meaningful and highly significant. There has been testimony here that the difficulties at the Port of Boston are attributable to the freight rate situation. This report, while mentioning the freight rate situation, refers as the primary difficulty at Boston to the labor situation there.

Let me read you as an example of the type of material that is available in this report, one paragraph from it.

Mr. Keenan: Mr. Examiner, before counsel does this, can we go into the question a little bit of how this thing is going to get before the Commission. I don't think it is necessary to go into what is in it yet. Whatever objections there are to it are not phrased at this stage of the game with regard to relevancy. What is counsel's proposal for getting this thing into evidence, that is all I think we need to know in this case at this stage.

Examiner Boat: What is your purpose, Mr. Langdon?

Mr. Langdon: I want it in the record, sir, a highly relevant statement against the interest, apparently an official document concerning the Port of Boston.

[fol. 507] Mr. Keenan: Mr. Examiner, I think—

Mr. Langdon: If I may interrupt the objector over here, I think it was he, yesterday, who said he was going

to object on the ground that this was irrelevant, and I was proposing to read a portion and tender proof, a part of this report, to indicate its relevance.

Mr. Keenan: There is an objection before you get to relevancy, that is, the thing is not authenticated, and there is no accepted procedure for introducing documents such as this in evidence.

Mr. Langdon is far more expert in this than I am, I am sure he knows it. If we can proceed along those lines, I think we will have very little difficulty.

Mr. Langdon: Mr. Examiner, I know we can ask for a subpoena, and it is our purpose so to ask for a subpoena of the Chairman of this Commission—Advisory Council, rather.

I am asking, before we have to take that step, however, whether or not the counsel in this case, for the same port of Boston Commission, will not cooperate with us in getting these reports authenticated?

Mr. Keenan: Well, regardless of whether counsel for the Port of Boston will, I think the Examiner might be interested to know that the Boston Railroads will not consent to the authenticity or stipulate to the authenticity of this document until it is properly supported by a witness on the [fol. 508] stand, and that request is not unreasonable one single bit.

No such document should go in in our view until there is a man on the witness stand who can talk about it and explain it.

Mr. Langdon: Well, you see, Mr. Examiner, under those circumstances, then, I am forced, assuming there is no word to the contrary, from Mr. Foley—

Mr. Foley: Any word from me is immaterial at this stage. The Boston Railroad has taken a position on it. I see no reason why he should not prove this in normal course by calling somebody who knows. I just do not know anything about this document.

Exam. Boat: That is the only way we can get the facts in the record.

Mr. Langdon: All right, then, in those circumstances, sir, we should like to have issued, and I am proceeding

under Rule 56 of the Rules of Practice, a subpoena returnable at the March 27th hearing.

Exam. Boat: 25th.

Mr. Langdon: March 25 hearing, for Mr. Ralph M. Binney, who is indicated here as chairman of this Advisory Council.

Now, Mr. Binney is an officer of the First National Bank of Boston and, according to the telephone book, his home [fol. 509] address is 304 Dover, R.D., Westwood, Boston.

In accordance with Rule 56 I can orally and do orally request a subpoena on this record in the form just given.

Exam. Boat: The initial is M. as the first letter in "M".

Mr. Langdon: Ralph M. Binney.

Mr. Keenan: Mr. Examiner, I conceive that the special rules applicable to this proceeding would at least give me standing to object to Mr. Langdon's request, in view of the standing and integrity and neighborhood of the witness whose testimony Mr. Langdon seeks to obtain, I waive whatever right I might have to object to the request under the special rules.

Mr. Langdon: What does that mean?

Mr. Keenan: I do not object to the issuance of the subpoena, Mr. Examiner.

Mr. Foley: Mr. Examiner, may I add I certainly do not object to the issuance of the subpoena.

Mr. Langdon: Will you produce him voluntarily?

Mr. Foley: I can't produce him.

Mr. Keenan: If I were authorized to represent him, I would be glad to accept service of the subpoena, but he will have his own attorney, I imagine, so I have no authority to speak for him at all.

Exam. Boat: Is it all right to have that prepared for [fol. 510] you at noontime?

Mr. Langdon: Thank you, sir.

I guess General Stratton is the next witness.

J. H. STRATTON a witness, was sworn and testified as follows:

Mr. Langdon: I have here, sir, the original of General Stratton's verified statement with appendix.

Exam. Boat: I have a copy.

Mr. Langdon: I do not think you have the original, sir.

Direct examination.

By Mr. Langdon:

Q. General Stratton, have you been sworn?

A. Yes, sir.

Mr. Langdon: May we have a number, sir, for this exhibit?

Exam. Boat: Yes. His statement may be identified as Exhibit 53.

(Protestant's Exhibit 53 Witness Stratton, was marked for identification.)

Mr. Langdon: The witness, J. H. Stratton, whose verified statement has just been identified as No. 53 is tendered for cross questioning.

Mr. Moerman: Mr. Examiner, I would like to have a little talk with General Stratton. Before I do, I heard a March 25th date mentioned here. Would you enlighten me a little bit on it?

[fol. 511] Exam. Boat: We were discussing yesterday the matter of the adjourned hearing.

Mr. Moerman: Yes, sir.

Exam. Boat: Mr. Colgren expressed a necessity for such a hearing.

Exam. Boat: For the purpose of cross-examining Witness Heywood, I think, that is the primary reason.

Mr. Moerman: I have been here all morning, I just had not heard any discussion.

Exam. Boat: I had not announced it. I was going to announce the date at the adjournment of our hearing here, but presumably that date is satisfactory to the parties here, at least I heard no expression to the contrary.

Mr. Moerman: The 25th of March.
Exam. Boat: Of March.
Mr. Moerman: All right, sir. Thank you very much.

Cross examination.

By Mr. Moerman:

Q. General Stratton, I am counsel in this case for the Port of New York Authority, the Metuchen Chamber of Commerce, and 20 or 30 other parties interested in this proceeding, mostly grouped around the Port of New York.

In connection with your exhibit 53, you tell us a good deal about yourself, and I understand that you are a civil engineer by profession.

You would not happen to be an economist, also, would you?

[fol. 512] A. No, sir.

Q. You have 600 engineers and economists in your firm, and for economic advice you depend on your professional economists, is that right?

A. To a large extent. Of course a good part of the engineer function involves economics in relation to engineering—strictly in relation to engineering. Engineering of course may embrace transportation, too, in relation to evaluate a transportation facility.

Q. When you were at the military academy, or at the Polytechnic Institute, did you have any courses in economics?

A. No, sir.

Q. You tell us that you were once a supervising engineer of the Panama Canal, and that while there you were in charge of economic and engineering studies to determine the feasibility of expanded canal facilities.

You tell us also that you made some comprehensive engineering and economic studies of the Ports of Hampton Roads, Baltimore, Philadelphia, and New York.

Is the Port of New York under any disability as a port from the Seward side? Is it a good harbor?

A. Oh, yes, excellent.

Q. One of the best?

A. Yes, sir.

Q. Now, in connection with your exhibit 53, did you make [fol. 513] any study of Port facilities at the Ports involved in this case?

A. We have in the past in studies for the Delaware River Ports prior to my joining the firm in 1948.

Subsequent to the period that I joined the firm in Baltimore two separate studies, a study at Hampton Roads completed fairly recently, and in two instances we have been retained by railroads to make special studies with respect to the marine facilities and the traffic that might be expected to be handled over those facilities.

Q. As I read your exhibit, general, you give us a comprehensive showing of certain port services at New York, Philadelphia, Baltimore, and Hampton Roads.

Is my understanding correct that your exhibit does not include a survey of any physical facility like coal-handling facilities, ore-loading and unloading facilities, grain-handling facilities?

A. No, we were not asked to examine anything in the way of physical facilities at any of the ports.

Q. In connection with the assessment or survey of the port services at New York, Philadelphia and Hampton Roads, were you asked to come to any conclusion with respect to the influence of those services on the movement of traffic?

A. Well, no foreordained conclusion was given to us. I think the reports we had published earlier had indicated [fol. 514] in several instances that the services of the type enumerated in this exhibit were highly important to a port, and that New York over-shadowed in each case the separate ports that we studied.

Q. Did you study the physical facilities at the other ports in addition to the services such as are included in your exhibit 53?

A. At the time we made those port studies we did, yes.

Q. Did you come to any conclusion with respect to the influence of the physical facilities of the other ports for handling ores or grain?

A. That was not a comparative study. That was a study of each port within itself. In many cases we recommended

improvements and betterments and expansions that might be needed over the course of time if they were to improve their position with respect to cargo movements.

Q. Did you recommend bulk ore handling terminal for the Port of New York, New York Harbor?

A. We have never studied that phase of the New York Harbor, no, sir.

Q. You do not know whether New York has any up-to-date modern bulk handling facilities?

A. In terms of ore handling.

Q. Yes, sir.

A. Only the limited ones I have seen, the limited grab-bucket operations I have seen on the Jersey side are the [fol. 515] only ones I know of.

Q. You would not rate them very highly, would you?

A. Not in comparison to some of the more modern ones at other ports, no, sir.

Q. How about Baltimore and Philadelphia as ore unloading facilities?

A. In both cases they have been built too subsequent to any period of visit I have made, so I have not seen them.

Q. You testify that the Port of New York has a differential. What do you mean by that?

A. A rate differential, that is, from the so-called differential territory rates being higher for New York than for these other three ports.

Q. General, what is differential territory?

A. Well, I can't define it. I am familiar with it in a map plot. I do not have such a map with me.

Q. Give me a general idea.

A. It is that area in which these several ports would compete for traffic, and the rates might, under certain circumstances be equal, but in the case of practice, as we understand it, there has been a differential established over a long period of years. That differential being in the favor of the ports south Herly to New York.

Q. Yes, but General, you testified that these services have some considerable influence on the movement of traf- [fol. 516] fic to and from the territory.

Give us, will you, just some rough idea of what the territory is.

Exam. Boat: The geographical extent?

Mr. Moerman: Yes, the geographical extent.

The Witness: It is the area south of the lakes, extending as far as Chicago, including the Cleveland area, Indiana, and Illinois, some of Tennessee and Kentucky, I believe.

By Mr. Moerman:

Q. That is right, that is roughly right.

A. And parts of Pennsylvania.

Q. Yes, sir, that is about it.

Now, General, do you have your statement before you?

A. Yes, sir.

Q. Turn to page III, so you can follow me more easily.

You say in the middle of the page "This statement has been prepared on behalf of the following railroads," and you name the B & O, the Canton, the C & O, the N & W, the Pennsylvania, Reading, Virginia, and Western Maryland.

Is it a fact that your firm was retained to make this study by these railroads?

A. Yes, we understand that that is so. I think our contract is actually tied to the Baltimore and Ohio as the agent for the other railroads.

If my recollection serves me correctly—I have not veri- [fol. 517] fied this on the contract—I am not sure, I believe one of my partners signed it.

In the discussions, there were several railroads represented, and when we accepted the assignment it was with the full understanding that we were serving 8 railroads, but naturally we could not deal with the 8 railroads separately, some one would have to be the liaison or agent with us, that is, some man would have to speak for all.

Q. Yes, generally—

A. In the narrow dealing with us.

Q. What I was getting at is, you have a statement here that it was prepared on behalf of.

I wanted to know if the railroads were your clients or whether maybe somebody like the Maryland Port Authority, Mr. Marbury's client, hired you?

A. Oh, no.

Q. I want to know who hired you?
A. No, absolutely, the railroads.

Mr. Moerman: Mr. Examiner, this is a point of personal privilege. I would like to go off the record a moment.

Exam. Boat: Very well.

(Discussion was off the record.)

Exam. Boat: On the record. You may proceed.

By Mr. Moerman:

Q. General Stratton, in connection with the preparation of this exhibit, did you familiarize yourself with the issues [fol. 518] in this case?

A. Only generally that it was a rate issue and that this was one aspect that was being developed by the railroads. I understood another aspect being developed was the relationship of sailings in the various ports. Beyond that we did not inquire.

Q. Were you in the hearing room yesterday?

A. No, sir.

Q. Do you know that the New York Railroad, respondents, have reduced their rates in an effort to eliminate the differential you talk about in your testimony?

A. No, sir.

Q. In your statement on page II, you state at each of the four ports, referring to New York, Philadelphia, Baltimore and Hampton Roads, that there is a good natural harbor, deep channels protected anchorages, available capacity for handling expanded cargo volumes.

Now, some effort has been made, generally, in this case to make a distinction between so-called general cargo and bulk cargo.

Are you aware of such a distinction?

A. Well, physically between the products I am. They are not the distinctions developed in this hearing because I have not been attending the hearing.

Q. Yes. Well you tell me whether you know if at New [fol. 519] York there is available capacity for handling expanded cargo volumes of imported ores like chrome, ferro-manganese and others?

A. Specially devised for that purpose?

Q. Yes, sir.

A. No, I cannot say.

Q. The facilities are pretty primitive, are they not?

A. There again it is a relative term. I would say with large volumes coming in frequently, my general observation is I would say they are not up to standards of others.

Q. Yes.

Particularly in comparison with Philadelphia, Baltimore, and Hampton Roads, isn't that right?

A. Yes.

Q. General, turn to the top of the next page, will you, please?

What was your mission, if you had one, in connection with the preparation of your exhibit?

A. Generally it was to make an evaluation of the services that are available in the various ports, the services being the agreed list as contained.

We took the—the inquiry was made of us, and our interest in pursuing this assignment, from the fact in several of our reports we had evaluated services, not to the extent to the fullness that this is done, and not quantitatively to [fol. 520] the same degree, that is, with our general knowledge of the Port of New York and immediate knowledge of Baltimore, for example, under study, it was quite apparent that Baltimore lacked services, or Hampton Roads, in the study there, comparable in numbers and kind to New York, and that this, among other things, operated to the disadvantage of the port.

And we suggested that this be kept in mind in pursuing the objectives the port was seeking in developing more cargo, and that they do everything they could do to encourage better port services, as well as more frequent ship sailings, and I think we advised in every case that they should endeavor to preserve the differential, which was to us about the only factor that is really competitive among the ports, as New York having the overwhelming advantage on these various services enumerated.

Q. How overwhelming is the advantage, General?

A. Well, statistically it is almost stunning. Practically in the case of the operation, I do not know that you can

say quantitatively, if you can't isolate one service from another, they all seem to work together.

It would seem to us significant to the point, when you used the word "overwhelming," I meant the fact that in some cases they do not even have the services in these other ports.

[fol. 521] Q. How overwhelming is the advantage with respect to imported iron ore?

A. There again I said we could not isolate with respect to any single service or any particular commodity.

Q. How overwhelming is New York's advantage with respect to cargo moving to and from differential territory involved in this case?

A. Involving what?

Q. How overwhelming is New York's advantage over Baltimore, for example, with respect to the cargo involved in this case, the tonnages of cargo on export and import? Do you know?

A. I think we are stretching the word "overwhelming" as I used it. I used overwhelming in the sense of services, not overwhelming in the sense of its direct effect on the cargo. I did not intend to imply that. With respect to availability of services, the number of people you could turn to, the kind of aid you could get, I meant it that way, not in terms of its direct influence on the cargo.

Because I think I qualified by saying we found we could not quantitatively say with respect to any one service for any one commodity what its influence was.

Q. But you could say in total?

A. That the effect was very significant—the end effect was significant.

Q. What do you mean by significant?

[fol. 522] A. Well, coupled with other things, it made quite apparent that New York was operating or taking in a lot more cargo than these other people were at that time.

Q. How much more?

A. I can't recall the figures.

Q. Do you know how much more now?

A. No, sir, I do not.

Q. When you say that—

A. How much they generally, when we were writing this, we were writing about general cargo, we were thinking in terms of general cargo. I believe our reports are fairly clear on that point.

Q. What is general cargo?

A. Well, that is cargoes, other than bulk, that are handled in bulk, I think they might be subject to commodity rates.

Q. General, have you any idea about how much traffic through the four ports on which you made a survey between the differential territory here involved and the port, exporting and importing, moves by rail as against what moves by other forms of transportation?

A. Well, I had a good idea at one time. Anything I would hazard now would be trusting my memory.

Q. Just your recollection?

A. Yes, it would just be my recollection. That could be well off.

[fol. 523] Q. Your exact words on page IV of your statement, would you look at it please? Do you have it, General?

A. Yes.

Q. "The frequency and range of shipping services offered at New York and the supplementary services available at that port influenced the movement of cargo to such an extent that large volumes of cargo moving to or from differential territory were routed via the Port of New York."

Now, you used the word "were". Do you mean it in the sense of the past or do you mean it in the sense of the present?

A. Well, we are talking here in the first sentence, in the introduction to the sentence, our studies of the ports, we are talking about the past there. We have not brought those up to date. I think the most recent one was 1955. It was in 1955. The one before that was 1953, and the other one was 1948, I believe, or 1949.

We are tying this to the past, because we were not asked to make a study, a new determination of these volumes.

Q. The latest figures on which this study are based are as of what date?

A. The latest—wait a minute, this was not a study based on—the statement was based—

Q. I am talking about the statement.

A. Yes.

Q. You are talking about large volumes of traffic.

[fol. 524] A. Yes.

The statement was based on studies made in 1956 and 1955 was the most recent one.

Q. Can you help me when you say "large volumes," by backing it up with any figure?

This is a situation where we have been struggling to get some precise information. Can you give me some?

A. Yes, sir. Again I must trust my memory.

Q. Please do.

A. If you will accept it for that. As I recall in our Hampton Roads studies we found by-passing Hampton Roads there was something over one million tons going to New York area that we felt some of it might be captured for Hampton Roads, not in its entirety, there were certain commodities, I think cigarettes for one, in which shippers told us they had special reasons for going to New York, with the existing sailings—some of the shipping destinations overseas, that they would probably always go to New York but—

Q. General, aren't you talking about differential rates here influencing the movement of large movements or large volumes of traffic from differential territory? That is what the case is about.

A. Well we are talking about what we said in the Port study sometime ago.

[fol. 525] Q. We are talking about what you have to back up your statement that the differential influences large movements of traffic via the Port of New York.

I just want to get into the detail a bit.

Mr. Marbury: What was that statement again, please?

Mr. Moerman: I said the General says at page four of his statement, if I did not misspeak—let me read, please—that the shipping services at New York influenced the movement of cargo to such an extent that large volumes of cargo moving to or from differential territory were

routed via the Port of New York in spite of established rail differentials.

Mr. Macleay: That wasn't what you said, counsel.

Mr. Moerman: Did I misspeak—I am sorry?

By Mr. Moerman:

Q. Now, my question is, I am still trying, General, to get at large volumes. You made an impressive study here, and you say that the services available at New York influence the movement and you say in spite of the differential, and all I am trying to find out is what you mean by "large volumes."

Now, if counsel wishes, Mr. Examiner, to confine the exhibit to the study of services available, and to remove the thus far unsupported opinion of this witness, I can stop my cross-examination.

Mr. Langdon: This paragraph has to do with the conclusions reached as the result of the prior studies of this [fol. 526] firm of Hampton Roads, Baltimore and Philadelphia and as I understand it, in connection with those studies there were traffic movements studied that went right through the Ports of Baltimore, Hampton Roads, and Philadelphia, on their way to New York. Isn't that right, General?

The Witness: That is correct, yes.

Mr. Langdon: That is what you are referring to here?

The Witness: Yes.

Mr. Langdon: That traffic came from the west, did it not, in part at least?

The Witness: Yes, sir.

Mr. Moerman: Are we going to get the studies in this way, or am I going to have the studies in this case?

Mr. Langdon: I think we will be glad to—they were supplied to the firm, I think at the time by the railroads themselves on a sample basis, and off-hand, I see no objection why they should not be supplied for this record.

I think they are within the control of the railroads, are they not, General?

The Witness: They are in the control of the railroads, yes, sir.

Mr. Langdon: We may say, we made special studies for the firm indicating the traffic that was going right through Baltimore on its way to New York. We took sample waybills, and that is I think one of the bases upon which this conclusion is predicated.

[fol. 527] Mr. Moerman: Well, Mr. Examiner, my difficulty is they are not here.

Exam. Boat: That is right.

You are bringing up something I think that goes to the weight of this testimony, whether we are to give the weight in view of the lack of supporting evidence.

Mr. Moerman: Well, if I made my point clear, as I guess I have, I do not have to pursue the subject any further.

By Mr. Moerman:

Q. General, I tak it that in connection with your testimony about the influence of services at the Port of New York on the movement of traffic, you nor anybody for your firm interviewed any shippers on this matter, is that right?

A. For this particular?

Q. Yes, sir, for the purposes of this study and for the purposes of the statement you make here?

A. I do not know, but that could be certainly verified.

Q. But you personally did not?

A. I personally did not, no.

Q. And, as I understand from Mr. Langdon it is based on some other studies, but you did not make any supplementary inquiry in connection with the influence of services.

A. Well—

Mr. Marbury: Mr. Examiner, if there is one thing that [fol. 528] is clear in the case, it is that large volumes of freight are moving to New York from Central Freight Area. The figures are in. What is this about?

Exam. Boat: Well, if that is in the case, the record will show it.

Mr. Marbury: Yes, the record does show it.

Mr. Welsh: Mr. Examiner, it is clearly indicated on this record, if it please you, sir, that the statement has been made that in their movement they move past Baltimore.

I doubt very much that the commodities that move past Baltimore originated in CEA territory.

Mr. Langdon: Well, we will be very glad, based on our present traffic study in this case to indicate the volume of traffic moving from differential territory right through Baltimore on its way to New York.

It is a very substantial amount.

Exam. Boat: I think we should recess for 10 minutes at this time.

(A brief recess was taken.)

Exam. Boat: The meeting is in order.

By Mr. Moerman:

Q. General Stratton, there was mention, I believe by Mr. Langdon of some railroad studies which he offered in this proceeding.

Do I understand that these studies were made available to you?

[fol. 529] A. Yes, sir.

The waybills were made available to us in these various port cities.

Q. Was it on the basis of those studies made available to you by the railroads named in your exhibit that you came to the conclusion that the services at New York influenced the movement of cargo from differential territory in spite of the established rate differential favoring Philadelphia, Baltimore, and Hampton Roads?

A. No, sir. The information made available on freight movements had to do with the traffic that was by-passing the ports; independently of the railroads we evaluated the services at each of these ports. The railroad tied in only with respect to the freight movements that went by these ports.

Q. You were not furnished, were you, the figures with respect to traffic moving by rail to and from differential territory, export-import traffic, through the various ports included in your exhibit?

Mr. Langdon: I don't think that question is clear.

Mr. Moerman: Let me restate it.

By Mr. Moerman:

Q. At the time you were furnished with various waybills, or waybill studies, were you furnished with a summary of the actual volumes of export-import traffic moving through the four North Atlantic ports, the subject of your [fol. 530] exhibit?

A. Of course we had knowledge of the traffic moving through these ports from the Corps of Engineers' statistics, largely, and then the available material, made available to us, was with relation to the line-haul of these railroads to the various ports on the sampling technique. It was not a solid section over say a year, or anything of that sort—but on a sampling basis.

As I recall we had access to the one per cent waybill study by the I.C.C. made some years ago. All this was involved in the form of the sampling technique.

Q. Do the engineer reports, General, breakdown traffic as between differential territory and other territory?

A. No, sir.

Q. How about the one per cent waybill study?

A. No, sir. Not that I recall.

Part of our study delved in where it originated where we could, and where it was going to.

Q. General, the evidence in this case shows that the export and import tonnage through Norfolk for the period August 1, 1955 to and including July 31, 1956, was 1,300,000 tons rounding-off.

If you will bear that figure in mind, I will give you another preliminary to a question, 1,300,000. It also shows that the export and import tonnage through the Port of [fol. 331] Baltimore for the same period was 4,900,000 rounding off. And for the same period, through Philadelphia, one million, rounding off, making approximately 5 times more through Baltimore than through either Norfolk or Philadelphia.

In view of those figures—

Mr. Langdon: May I ask what exhibit you are reading from?

Mr. Moerman: This is my own summary from figures given yesterday by Mr. Mollman. If you want the exhibit, I can give you the exact pages of the exhibit.

Mr. Walker: This is differential territory freight.

Mr. Moerman: Yes, sir, differential. These are in the record.

Mr. Langdon: May I look over your shoulder?

Mr. Moerman: Sure, the Baltimore tonnages shown on witness Mollman's MLM-2 at page 85 and pages 19 and 85, if you will add together the exports, Mr. Langdon, shown on page 19 of the witness Mollman's MLM-2 and the imports shown on page 85, you will find the Baltimore figure.

The New York total is Mr. Crookshank's exhibit.

Philadelphia totals are shown on page 55 of Mr. Mollman's same exhibit for exports and on page 113 of Mr. Mollman's exhibit for imports.

Mr. Bongartz: For clarification, Mr. Mollman, do I understand, referring to New York, that you are only using [fol. 532] the tonnages shown by Mr. Crookshank?

Mr. Moerman: Off the record a minute.

(Discussion was off the record.)

Exam. Boat: On the record.

By Mr. Moerman:

Q. Now, General, you have some recollection of the figures I have given you?

A. I think I remember the ones you just cited, yes.

Q. All right.

As between Baltimore, Philadelphia and Norfolk, taking for example Baltimore, Norfolk, 4,900,000 versus 1,300,000, can you tell me what influences the movement of traffic through Baltimore as compared with Norfolk?

A. I suppose it is in part the railroads and the territories they touch.

That is a question I think would take some study to give a lucid comprehensive reply, but it might have some bearing on it.

Q. Would your answer be the same with respect to the situation we find between Baltimore and Philadelphia, 4,900,000 vs. 1,000,000 for Philadelphia?

A. It certainly would be less so with respect to the railroads' service.

Q. Both the Pennsylvania and the B & O serve Baltimore and Philadelphia, don't they?

A. Yes, sir.

[fol. 533] Q. Could you state more precisely for me in the case of Baltimore and Philadelphia what, in your judgment, accounts for the difference in tonnage volumes, export and import to and from differential territory?

A. I think the question implies an expertness that I do not have to put a value—to give an answer that might be worthwhile on a question of that sort.

Q. I appreciate your candor, General.

As between Baltimore and New York, where the evidence of record shows 4,900,000 tons through Baltimore as against the 3,000,000 through New York, how would you explain—what influences or accounts for the 1,900,000 ton advantage Baltimore over New York for the one-year period? And this is a 55-56 period, General, which I take it is the period with which you have some familiarity.

A. No, the most recent period we had is 55 and that was Hampton Roads. And I think it was 1953. Baltimore, the most recent one at Baltimore.

We have not followed the trend since those periods named for the separate ports.

Q. In talking about influences on the movement of cargo, you mention that you had recommended the retention of the differential. Did I understand that that was in connection with Hampton Roads ports?

A. I think we made the same statement on the Baltimore [fol. 534] report, that that was a competitive advantage they had, and that they, the people at Baltimore, interested in promoting and developing the Port, wanted to preserve their position and to move ahead, that they would have to protect the differential, or they would lose that one competitive advantage, there being other natural advantages with New York such as ship sailings, and services.

Q. On the movement of import ores, it is your opinion that under equalized rates, there would be a substantial amount of ore traffic imported through the port of New York.

Mr. Bongartz: Just a moment, if you please.

Would you clarify what you mean by ores?

Mr. Moerman: The ores involved in this case.

Mr. Bongartz: In other words, you are excluding iron ore?

Mr. Moerman: I am excluding iron ore because it is in another case.

Mr. Bongartz: You are excluding it because it is not in this case?

Mr. Moerman: Yes, because the issue is somewhere else and because we do have—

Mr. Bongartz: I wanted it clear to the witness, when you use the term of that character, what it means.

Exam. Boat: Wasn't it brought out here, though, there was some ground iron ore which moved which I understand [fol. 535] is in this case?

Mr. Bongartz: The witness also explained, Mr. Examiner, that was not—

Exam. Boat: A relatively small volume.

Mr. Bongartz: Yes, it is not iron ore as we know it in the trade.

Mr. Langdon: It is in bags, actually.

Mr. Moerman: Let me test the witness' knowledge about the influence on the movement of traffic so long as that is his testimony with respect to iron ore.

Mr. Bongartz: I object to getting into iron ore. It was testified time and again in this proceeding, Mr. Examiner, that iron ore is not a part of it. Mr. Moerman this morning asked some questions. I let them go. If he is going to pursue this line of questioning, I will have to object to it.

Mr. Moerman: Mr. Examiner, I think I may test the witness' knowledge with respect to influences on the movement of traffic generally, so that in the final analysis I can test his testimony here. The witness comes here and testifies about influences on the movement of traffic, while iron ore, true, is not included in this case, I want to know if this witness who testifies here that he has made substantial port studies and is tendered as an expert, then knows something beyond the facts or movements in this case?

Mr. Langdon: Well, if Mr. Moerman wants to know [fol. 536] whether the differential at Baltimore and Philadelphia has an influence in the movement of bulk com-

modities, obviously there is no question, it does have an influence in the movement of bulk commodities.

General Stratton's study of the services that are available at the several ports had reference in particular to, as he described it earlier this morning, general cargo, which I take it excludes or would exclude ores.

Mr. Moerman: On the other hand, he is talking about factors which influence the movement of traffic. I think I can find out from the General, Mr. Examiner, if you will let me, what he knows about factors that influence the movement of traffic, because he says, in his testimony, that the services influenced the movement of large volumes of traffic through New York.

I want to find out what other influences there are in this picture.

Mr. Bongartz: The General has so testified, he has been referring as I understand his testimony, to general cargo.

Mr. Moerman: What is general cargo?

Exam. Boat: The objection is overruled.

Mr. Colgren: Mr. Examiner, before we get away from this subject, I want to point out for the record that the statement by the witness—rather counsel Bongartz, that iron ore and the bulk commodities are not involved in this [fol. 537] proceeding, and that the testimony with respect thereto is a statement of the position apparently of the protestant carriers.

Mr. Bongartz: It is unfortunate that you did not understand my statement because I was only referring to iron ore, Mr. Colgren.

Maybe you misunderstood that.

Mr. Colgren: Mr. Examiner, I just want to have the record straight that any effect of large shipments of iron ore and coal through the southern ports, which may reflect and have a bearing on the issues in this proceeding, must have the consideration of the Commission.

Mr. Bongartz: Mr. Colgren—those witnesses, Mr. Examiner, were the ones I was referring to particularly, when I said iron ore was not involved in this case.

Exam. Boat: We understand.

Will you answer Mr. Moerman's question now?

The Witness: I would like to have the question repeated?

Exam. Boat: Yes, will you read it please, Mr. Reporter?

(The reporter read back the pending question as above recorded.)

Mr. Bongartz: As I understand it, in the question of Mr. Moerman, he has excluded iron ore from the term "ore"?

Mr. Moerman: In the iron ore case, Mr. Bongartz, the rates as I understand it, were rates through North Atlantic Ports to the Youngstown district.

[fol. 538] I honestly do not know whether there are iron ore rates in the official territory which might be in issue in this case. Let's ask Mr. Colgren.

Mr. Colgren: My point is this: Mr. Moerman and Mr. Bongartz, that there are many commodities in the traffic studies in this proceeding which do not reflect rate adjustments which are under consideration here of the Commission.

Nevertheless, the movement of all that traffic must be taken into consideration in the Commission's deliberations.

Mr. Bongartz: The fact is, is it not, Mr. Colgren, that the tariffs under suspension in this proceeding do not relate to iron ore, isn't that correct?

Mr. Colgren: That is right, yes, sir.

As well as many other commodities.

Mr. Foley: Mr. Examiner, it seems to me it is a transportation circumstance that cannot be ignored, the movement of iron ore.

The rates are not involved, but it is a part of the movement picture.

Mr. Marbury: Mr. Examiner, the question is, what is the witness to understand by the question?

Exam. Boat: Can you clarify it?

Mr. Moerman: General, I want to ask you a few questions about things that influenced the movement of traffic.

You have testified, have you not, concerning services [fol. 539] at New York influenced the movement of traffic, is that correct?

A. Yes, sir.

Q. Now, if the Commission in this case should approve the rates proposed by the respondents, and the results

should be that on import ores the rate from the Port of New York, the rate from the Port of Philadelphia, and the rate from the Port of Baltimore and from the Port of Norfolk is the same, the question I put to you is, do you think that equalization would have some influence on the movement of traffic via the Port of New York?

Mr. Bongartz: Before the witness answers that question, I want it clarified as to what you mean by ores in that question.

Mr. Moerman: I accepted your definition as excluding iron ores involved in I & S Docket No. 6074. Let me see if I can help you some, Mr. Bongartz.

Mr. Bongartz: I wish you would.

By Mr. Moerman:

Q. Mr. Witness, are you familiar with a proceeding before the Interstate Commerce Commission known as I & S docket 6074?

A. No, sir.

Q. Are you familiar at all with the movement of iron ores from abroad through North Atlantic Ports?

A. Somewhat, yes, sir.

Q. Do you have any idea about the volume in which it moves?

[fol. 540] A. I have some idea of the volume at the Fairless Works, yes, sir.

Q. You do not know anything about the movements to the interior?

A. To the interior?

Q. To Youngstown.

A. Specifically?

Q. Yes, Youngstown, Weirton, that district?

A. No, at this moment I do not have, no, sir.

Q. You are just not familiar with that controversy?

A. Not with that controversy, no, sir.

Q. I am trying in some way to get to you with a question where you will comfort Mr. Bongartz by assuring him you do not have in your mind import iron ores when you answer me, so exclude that from your mind, but let's talk about chrome, ferro-manganese ores, other than iron ore.

Tell me what you think the influence will be on the movement of traffic, considering that New York today has a differential, if the differential is removed and the Ports are equalized—ores moving to differential territory, imported?

A. I think the removal of the differentials generally would hurt the Ports of Norfolk, Baltimore and Philadelphia.

Now, I do not believe you can give a whole answer to these problems, because say, ore, for example, may require special [fol. 541] facilities for handling.

If New York were to put up rival facilities, or superior facilities with the rate advantage change, they might well capture that freight. Of course, that is pure conjecture.

There are many things that enter into the decisions of those movements, and many influences that might have bearing beyond what I can evaluate in a specific instance.

Q. I take it without equalization on ores from New York, you, for example, as a member of your engineering firm, would not recommend the construction of modern ore unloading facilities at New York, would you?

A. You would have to pay us a fee to answer a question like that, sir.

Q. Hasn't the Port Authority had the pleasure of retaining your firm in the past, Mr. Stratton?

A. I do not believe the Port Authority has ever retained our firm, no, sir.

Q. Now, General, we have a statement in the record, it is verified statement No. 8, and the witness is Mr. John Patterson who is export traffic manager of the Allis-Chalmers Manufacturing Company.

Do you know him, Mr. Stratton?

A. No, sir, I do not think I know him.

Q. Do you know Allis-Chalmers, in general what they do?

[fol. 542] A. Yes.

Q. A large firm is it?

A. Yes, indeed.

Q. What do they make?

A. The machinery I know is largely that used in power development systems.

Q. Mr. Patterson testified "approximately 80 per cent of the total tonnage exported by Allis-Chalmers Manu-

facturing Co. is moving through the Gulf and south Atlantic Ports because of the substantially lower rail rates applicable to those ports and the resultant savings in transportation, as in every other service we buy, we look for the most economical service."

Just one more sentence: "So far as exporting our product is concerned, we find ourselves compelled to use ports other than the Port of New York because of the higher rail rates to and from that port."

Now, here is one shipper who is not largely influenced by the services at New York, isn't that so?

Mr. Langdon: Well, I object to the question. I don't think the witness should be asked to characterize the testimony of another witness.

Mr. Moerman: All right, I think the objection is well taken. The question is withdrawn.

By Mr. Moerman:

Q. So far as the various influences are concerned, which [fol. 543] influenced the movement of traffic through ports, what have you to say with respect to the differential at New York so far as it handicaps the movement of traffic through New York, in view of the fact that for the year I gave you before, Baltimore had 4,900,000 tons as against the 3,000,000 tons from New York, to and from the territory involved in this case?

A. Well, I don't know what makes those figures up. They are not known to me, or the breakdown. I do not know that I would be prepared to ascribe any single reason as accounting for the differences in tonnage. As I understood your question, it was pointing to a single factor, that is, namely, differential as being the factor influencing that.

Q. Precisely, and by the same token, I take it, General, you will agree with me that the services at New York are not the only single factor which influenced the movement of traffic through New York?

A. Oh, yes, I agree with that fully. The services, the ship sailings, and a lot of things are factors.

Q. There are many factors or they are just one?

A. They are 12 that we enumerate in this book. There is the matter of ship services, and there are other secondary ones that have a benefit that we did not study in detail. I can name one for example, I do not know how important [fol. 544] it is. We discussed it, it was decided we would not enumerate it, and that was the matter of export packing, and what influence it might have. Everyone knows that we have an excellent system of export packing in the Port of New York.

Q. Well, then, taking the situation as between Baltimore and Philadelphia where the ratio is approximately 5 to 1, Baltimore over Philadelphia, where the rates are equalized. What are the influences there?

A. I think I would have to study that some to give you an answer that would be worthwhile.

Q. In connection with your study of influences on the movement of traffic, have you come to any conclusion, if you studied this matter, as to whether or not the services at New York as against the differential are trending in any direction?

Mr. Langdon: Do you think it would be fair to state that question with regard to the type of traffic you have in mind, making a distinction between bulk traffic on the one hand and general traffic on the other, and general cargo on the other?

Mr. Moerman: I think that would be grossly unfair, because we are talking about railroad traffic moving via the railroads. I did not know the railroads, at least the respondents on this side, are more interested in general than in bulk. I would assume that the bulk cargo is something they are more interested in than the general cargo, [fol. 545] the heavy-loading traffic, not 18,000 pound cars.

Mr. Langdon: I think it would be helpful and fair to this witness to characterize the type of traffic that you have in mind in these questions.

The figures that you have used represent a composite, as I understand it, of some bulk traffic and general traffic. I think considerations and answers may be somewhat different.

Mr. Moerman: Well, you take him on re-direct, Mr. Langdon, will you?

I do not think there is any unfairness implicit in my use of these figures. They are in the exhibits. The distinction between bulk and general is one you have been trying to drive since the beginning of the hearing. It is my own opinion it is unreal. So far as the railroads are concerned, I feel strongly it is not only unreal and illusory, it is just meaningless.

Mr. Langdon: Well, it is a distinction on your port authority, one your port authority continually makes and has made over the years.

Mr. Moerman: But we did say—pardon me.

Mr. Langdon: It is a very realistic distinction and one that is generally recognized as you know.

Mr. Moerman: Mr. Gilbert testified what you thought was bulk was not bulk to him, like scrap iron, and other things.

[fol. 546] Mr. Moerman: May we have the question, Mr. Reporter?

(The reporter read back the pending question.)

Mr. Moerman: Maybe I will simplify that if I can.

By Mr. Moerman:

Q. In talking about influences, General, are you able to say whether these influences are static or whether because of changing times one thing is more important as an influence than another?

A. Of these 12 services enumerated?

Q. No, sir, I am talking about services, the rate differentials, for example.

A. I would not expect they would be static, no. Up to the time we made any study, we had the trends and the influences up to that point and from then on of course we have not extended those studies. I think it was evident in those studies that there are ups and downs of various influences at different times. A strike in New York would throw cargo south and maybe people would continue moving south for a while. We saw those effects in the statistical

study. Those are transitory, and I can't say with respect to long-range.

Q. General, with respect to long range, in the recent past, has there been substantial growth in the Port of Baltimore in import-export traffic, to your knowledge?

A. I have the impression, I have not checked the statistics, that there have been some increases in traffic at Baltimore.

Q. If it should appear in comparison with her sister [fol. 547] ports, the Port of New York was showing a relative decline in traffic—

Mr. Walker: Do you mean in volume of traffic or percentage?

Mr. Moerman: I am talking in volume, and in percentage, too.

Mr. Walker: If there were a decline shown in the traffic at New York, and again at other ports, would it not be a fair statement that the influence of services about which you speak is perhaps less potent and the differential more important?

The Witness: Well, your question is really asking me to put a quantitative evaluation on the services, and I think we have said in the statement that we did not feel we could, quantitatively we can. We appreciate they are all ports of influences, and they are transitory some of them.

For long-range, I think I would not be competent to answer that question without a great deal of study, and discussion with the people working and living with the subject of freight movements.

By Mr. Moerman:

Q. General, again, the respondents here have filed tariffs, the purpose of which is to eliminate the differential at New York. That is a fair statement, is it not?

A. Yes, sir.

Q. Now, your exhibit states that the services at New York influenced the movements of large volume of traffic. [fol. 548] In connection with this proposed reduction, if equalization should be obtained, coming back again to commodities like chrome, ferro-manganese, ores other than iron

ores, what, in your opinion will be the result of equalization, will the services at New York that you know about, influence the movement of traffic via that Port?

Mr. Langdon: I think the answer to that question was given previously. I do not know any point in repeating it. I think the General gave an answer to that question previously. Do you want it again, Mr. Moerman?

Mr. Moerman: Yes, I want it again.

The Witness: Well, I think I said that the removal of the differential might pull it into New York, but there are several other factors such as the physical facilities which might have an influence.

I do not know, I could not evaluate them all that might affect it, but certainly the pull would be toward New York, I think. If New York were not competitive and provided no facilities, it might diminish that type of trade through the other ports.

Q. You testified the services at New York influenced a large volume of traffic through New York. Tell me with respect to the Port of Norfolk and its 1,300,000 tons, what influences the movement of that quantity of traffic through the Port of Norfolk?

[fol. 549] A. What now influences it?

Q. Yes, sir.

Mr. Marbury: I think the witness ought to be told what that is.

Mr. Hanifin: If the Examiner please, I think the witness should be advised at least as to what the major breakdown of the commodities is, involved in the movement.

By Mr. Moerman:

Q. Were you advised as to the nature of the breakdown of cargo moving to and from the Port of New York in connection with your study? Were you given a commodity breakdown?

A. In connection with this study?

Q. Yes, sir.

A. No, sir, we were not given a commodity breakdown.

Mr. Moerman: Why should we have one here?

The Witness: Well, the point is, of course, we were evaluating in this brief the services, making a statistical survey, and where the statistics were not readily available to make inquiry and to discuss with the people who were in the various fields of endeavor so that we would be able to present a comparison of these services in terms of the numbers and types, that is principal versus branch or agents and all that sort of thing.

Q. Yes, General.

A. We did not ask for, nor did we see the pertinency of [fol. 550] tonnages or movements in relation to this study. We understood that was being handled by others in the case.

Q. Yes. And you came to your conclusion about movement of cargo to New York without any examination into the type of cargo, right?

A. We are tying it to the first paragraph. We came to that conclusion several years ago, in several studies, and we tie that to those several studies several years ago.

Q. Now, if your studies should be brought up to date and indicate some other fact, would you be prepared to alter your conclusion? I take it you would.

A. Based on fact, of course, we deal with the facts, yes. We deal with the facts, yes, sir.

Q. You do not deal with sailings in your study, I note that you say that would be handled by some other witness.

A. Yes, sir.

Q. You do not know, General, whether or not there had been a decline in export and import traffic through the Port of New York from and to the Territory involved in this case, do you?

A. Only by reason of reading the newspapers.

Q. I see.

Mr. Bongartz: New York papers, General?

The Witness: Yes.

By Mr. Moerman:

Q. Coming back a moment, General, if we can, to the [fol. 551] question with respect to the relative—to the influences on the movement of traffic through Norfolk, some

counsel wanted you to know about the type of traffic. I have no objection about your being informed but you did not have it with respect to New York.

Could you come to some conclusion on those influences on the figure I gave you, the 1,300,000, without knowing the consist of the traffic?

A. I would want to know, and I would want to study it over, yes, sir.

Q. But you did not want to know in the case of New York, and you did not study it over, is that right?

A. That is absolutely right, because we felt it was not pertinent to the undertaking that we embarked on—the preparation of this exhibit.

Q. Don't you care to know what the large volumes of traffic that you talk about are made up of?

A. When we determine the large volumes of traffic, that was made several years ago—it is clear in the first paragraph—with relation to specific studies, and they were made with great deliberation and care.

Q. They are not here. You do not have them with you?

A. No, they are of record in our published reports, and they can be furnished for the examiner if he cares to see them.

[fol. 552] Q. Let's go back to Norfolk and tell me about what influences a million tons of import-export cargoes through the Port of Norfolk.

Mr. Hanifin: Mr. Moerman, for clarification, when you use Norfolk there, are you using it in the sense of the Port of Norfolk or the entire Hampton Roads area?

Mr. Moerman: Can you help me and tell me what the figure is? I have Norfolk here.

Mr. Hanifin: I don't know. That is why I asked you.

Mr. Moerman: Let's have some help from the bleachers.

Mr. Myskowski: I believe it is Hampton Roads.

By Mr. Moerman:

Q. Hampton Roads?

A. Hampton Roads?

Q. Yes, sir.

A. I can't answer this without having a breakdown, with any great accuracy.

There is considerable tobacco shipments through the Hampton Roads Ports as you know. You see, I do not know how much is made up of that.

Q. I do not know, General.

A. I don't know whether the Navy and Army figures through that port are included.

Q. The tobacco is from differential territory, General.

A. It is from areas I think largely outside the differential territory.

[fol. 553] Q. Well, your answer is that you just do not know, without making a study, and a breakdown of the traffic?

A. That is correct, yes, sir. That is a correct statement.

Q. Let's move on to Philadelphia with one million tons; without making studies of the traffic and breaking it down, you could not assess what the influences are that generate that volume of export-import traffic through Philadelphia?

A. Not for my answer to have any value, no, sir.

Q. Yes.

Is your observation the same with respect to 4,900,000 tons through the Port of Baltimore?

A. The same.

Q. So that, while it is true that services will generate traffic, it must be true that other factors must generate traffic, too, like rail rates—favorable rail rates?

A. Yes, sir.

Q. You would not quarrel with that?

A. And promotion.

Q. Promotion, yes.

You did not inform yourself at all on sailings, you say?

A. We have in the past, oh, yes, but as to—

Q. For the purpose of this study?

A. For the purposes of any entry into this proceeding, no.

Q. General, coming back to your statement on page V, [fol. 554] you make the point that at New York, for example, freight forwarders have direct contact with the principal offices of almost every steamship line serving the Atlantic Coast and can thus more easily arrange shipments for their clients.

How does that work out as a practical matter? Would you answer that, if you can?

A. Well, I understand that the assignment of cargo, the acceptance and assignments of cargo are generally controlled by the principal offices of the steamships, and direct answers can be obtained from principal offices, whereas dealing through other ports, through branches or agents, that the answers can not be direct, but must be relayed.

There is certain loss of time and other factors that must enter into decisions on acceptance and assignments of cargo. So, dealing with the principal offices, is a lot more flexible from everybody's viewpoint. From the viewpoint of the principal themselves, as well as the shipper, the freight forwarder, or whoever he may be.

Q. Well, what impact, in your mind, could this possibly have on the movement of traffic via the New York railroads who are the respondents in this case?

A. Well, freight forwarders being able to deal directly with principal offices could give effective answers in short periods to shippers that might influence the selection of the port, and by that token of course the rail.

[fol. 555] Mr. Langdon: It might be appropriate at this point if the record would contain reference to exhibit—Mr. Mollman's Exhibit MLM-4, reproduction of an article—

Mr. Moerman: Oh, now, Mr. Examiner, don't permit this type of interjection in the middle of my cross-examination. It is wholly improper.

Mr. Langdon: I am assuming again that the counsel is interested in having the facts developed. They are developed on this very point by the Port of New York Authority itself.

Exam. Boat: That is in the record.

Mr. Langdon: It is in the record.

Mr. Moerman: And it is proper for redirect.

By Mr. Moerman:

Q. General Stratton, have you talked with any forwarders in the Port of New York in connection with your compilation?

A. Me, personally?

Q. Yes, sir.

A. No, sir.

Q. Do you know whether there has been any increase or decrease in forwarding services?

A. No, sir.

Q. Do you know Howard G. Seymour who is president of the New York Foreign Freight Forwarders and Brokers Association, Incorporated?

[fol. 556] A. No, sir.

Q. In connection again with influences on the movement of traffic, you testified that the services at the Port of New York influenced the movement of traffic through the Port of New York. Do you know whether or not the freight rate differential which favors the ports of Philadelphia, Baltimore and Hampton Roads, handicaps the Port of New York to any extent?

A. Putting it another way, I think it gives a competitive advantage to the Southern Ports, therefore, I think the reverse would be true, it does handicap New York.

Q. I want to read you a little from the testimony of a witness in this case, to see if you agree or disagree with him, because he also is talking about factors which influence the movement of traffic through the North Atlantic Ports and the witness is Witness Seymour, and his verified statement is No. 20 and, as I stated this gentleman is the president of the New York Foreign Freight Forwarders and Brokers Association.

Just a couple of paragraphs: "In recent years more and more exporters and importers after becoming familiar with the rail rate situation have ceased using the Port of New York in favor of other ports which have lower inland rail freight rates. This trend has been particularly noticeable since World War II."

[fol. 557] Now, have you noticed that trend, or made any investigation of it?

A. Up to the time we made these studies on the other ports, we indicated trends up to those periods of time. I have not studied any trends since that time and I would have to go back to these basic reports to refer to those trends.

Q. Yes, sir.

A. There being four reports, each being quite comprehensive—

Q. To go on—"During the war the Government preempted the Port of New York for its traffic and virtually forced commercial traffic to use other ports."

General, is that a statement that is true according to your knowledge?

A. Well, I was in the European Theater in the war and an awful lot of stuff came out of New York and it came out of other ports, too, Boston and Norfolk.

Q. "Many exporters and importers who thus become familiar with, and accustomed to the lower rail rates applicable via New Orleans, for example, continued to use the lower-rated ports even when New York again became completely available. They could see no reason for paying a penalty in the form of differentially higher rates in order to use the Port of New York; because of the inland rail rate situation freight forwarders operating through the Port of New York have been faced with the choice of two alternatives."

[fol. 558] General, again you testified that you did not talk to any freight forwarders and do not know of any—

A. I, personally, did not, but the staff that worked on that talked to a great number of them.

Q. But you were not told about any possible dilemma faced by the freight forwarders?

A. No, sir.

Q. "Because of the inland rail rate situation freight forwarders operating through the Port of New York have been faced with the choice of two alternatives: They could either expand or transfer their operations to lower-rated ports, or they could lose the traffic."

"In the case of the company with which I am personally associated, we have opened a branch office at New Orleans and presently have 9 employees engaged in operation at that port. Many forwarders operating at New York who could not or would not transfer or expand their operations simply lost the traffic."

Now, General, in connection with your study of forwarders, do you know to what extent there are branch offices operating at other ports?

Mr. Langdon: It is in the study.
The Witness: I think it is in the study.

By Mr. Moerman:

Q. Well, just, then, tell me it is in the study and that will be enough for me.
[fol. 559] A. I am pretty sure it is in the study. We made a comprehensive study. Yes, it is contained in the study.
Q. Yes, General.
The question I was getting at, do you know or are you familiar with any trend in the direction of establishing—
A. No, sir.
Q. —establishing branch officers away from New York, or enlarging offices away from New York?
A. I cannot say I know of any trend.
Q. All right.
"There is no question in my mind but that the inland rail freight rates which favor ports south of New York have resulted in a tremendous diversion of traffic from forwarders operating at New York to other ports."
Would you have any knowledge on that subject?
A. I do not know what conclusion I am expect to draw from that.
Q. The witness testified that the inland rail freight rates, the differential, General?
A. Yes.
Q. Have resulted from a general diversion of traffic?

Mr. Macleay: He did not testify to that. He testified there was no question in his mind.
He did not testify to that effect at all, Mr. Moerman, if you will check.
[fol. 560] Mr. Langdon: The figures are in the record.

By Mr. Moerman:

Q. Let me read again:
"There is no question in my mind but that the inland rail freight rates which favor ports south of New York have resulted in a tremendous diversion of traffic from forwarders operating at New York to other ports."

All I am asking you is in connection with your testimony here which shows the services available at New York, whether you learned in the course of your study from the forwarders anything regarding diversion of traffic from forwarders operating at New York to other ports?

A. No, we made no inquiry of that kind. We were seeking to list facilities and kind of services they offered only, not with respect to influences on their own businesses separately and individually.

Q. If you were, general, to make a survey of the factors influencing the movement of traffic through the Port of Baltimore, for example, would it not be a fact that first on your list in the order of importance would be the differential?

A. Yes, yes, of course. As I said before, it does give a competitive advantage to the southern ports. I said that at the beginning of my testimony.

Q. When you said that there is traffic—on page 6 of your statement—which moves through New York for rea-
[fol. 561] sons having no connection with some of the services described herein, what did you have in mind?

A. Well, in a rather broad way, probably dictated by our own movements. We move people in and out all the time because of the convenience of our office to the air facilities and one thing and another.

Generally people are processed through our office. We find it easy to arrange for the shipment of their cars and their personal effects and things of that sort. Those factors are influenced by the fact we are in New York as much as anything. I suppose that may pertain of course to other businesses having offices in relation to freight forwarders and other services, that naturally would use those they knew and could reach readily.

Q. General, I want to close my examination of you with a question I have asked before with respect to your testimony regarding the influence of services on the movement of cargo at New York.

Your testimony is that large volumes move to or from differential territory and that is found on page IV is it not, the result of your studies?

A. Earlier studies, prior to 1956.

Q. Earlier studies.

You are not prepared, of course, to give us any figures. [fol. 562] A. Subsequent to the dates of those studies, no, up to and including those studies, yes.

We will file those reports if desired.

Q. You can't define the word "large" or the term "large volumes" any better than you have done—more precisely I might say?

A. I cannot here, but they are defined in these reports that I referred to.

Mr. Moerman: All right, Mr. Examiner, that is all I have.

Mr. Costello: I have a question or two of the General.

Cross examination.

By Mr. Costello:

Q. Did you say, General, I am not quite sure I heard you correctly, that your firm made a survey of the Port facilities at the Port of Baltimore?

A. Yes, sir.

Q. And did this report indicate that the railroads serving the Port of Baltimore owned and operated fairly extensive amounts of marine equipment, such as tugboats and lighters, et cetera?

A. Yes, sir.

Mr. Costello: No further questions. Thank you.

Mr. Brandes: I would like to ask a question. Do you know of any shippers shipping from differential territory to Philadelphia, found the banking facilities, for example, in [fol. 563] Philadelphia, inadequate?

A. No, sir.

Q. How about shipments through Baltimore, would you say the Baltimore banking facilities are adequate or inadequate?

A. Will you trust my memory for an answer?

Q. I will take that.

A. Very active in the first Baltimore survey were some of the banking people.

I think they were on the special committee designed to push this study through in discussions with the bankers there. I definitely got the impression that lack of foreign correspondents was a handicap to them in their functioning as a bank.

Q. Do you know of any shipper who found that the services to Baltimore in the banking field were inadequate?

A. No, sir, I do not know of any shipper.

Q. Do you know of any shipper that used Norfolk that found the banking services in Norfolk inadequate for his needs?

A. No, sir.

Q. How about foreign freight forwarders?

Let's take Philadelphia; do you know of any shipper who uses Philadelphia that finds the services of the foreign freight agents inadequate in Philadelphia?

A. I think we could go through all 12 items for 4 ports, which would be 48, and the answer would be no on all of them.

[fol. 564] This question I believe is answered in this document saying that we did not isolate or attempt to isolate these quantitatively—with respect to specific cargoes, or specific shippers, that we viewed this as a whole, and that was true in our early reports and true now, that we have not.

Q. Would it be a fair summary of your testimony that the services with respect to which your report deals, are adequate in so far, generally adequate, in so far as the shippers require those services in the ports of Philadelphia, Baltimore and Norfolk?

A. I would say with respect to Hampton Roads in the most recent study, that we had many indications that they were not adequate, and they wished they had more.

I can't enumerate where these came from. Now that is our most recent survey.

Q. You said "more," General.

A. More complete services, more flexible services of all kinds.

Q. Do you mean that the banking—

A. I did not say banking. I said service, generally. I cannot document it.

Q. You can't enumerate the service?

A. No, sir. This study was made in 1955-56, and naturally we discuss these problems with hundreds of people. We have large volumes of correspondence. No doubt in the [fol. 565] record there are specific citations.

Q. You are taking an exception with respect to Norfolk. Do I gather that you agree that the services in Baltimore and Philadelphia—

A. Oh, no, no, no.

Q. —as presently existing, are adequate to serve the needs of the people that are shipping from differential territory through Philadelphia?

A. It was our conclusion they were not adequate to meet the present and future needs at all of these places we studied, and that they had better do everything they could to improve those services in the future.

Now as of today I do not know specifically whether they are meeting all needs or not. I know, as of the date of services, they were not.

Q. I have asked you if you know of any shipper using any of the three enumerated ports that found themselves embarrassed by the lack of banking facilities, or found themselves in difficulty by reason of that, and I understand you answered in the negative?

A. I said in the large sense we found these services all could stand improvement at the time of these surveys.

Q. I did not ask you whether they could stand improvement, I asked if they were adequate.

A. You asked if we talked to a specific shipper. I said no, [fol. 566] I did not.

It may be, if we look into our records, we may be able to show we talked to shippers, because we talked to many, many people. We had a great deal of correspondence. The freight forwarders, the warehouse people, the railroads, the truck lines, and others, gave us the names of customers of theirs, and we had a great deal of correspondence.

Now, I would assume that that question was probably contained in some of—a question of that nature was contained in some of them.

Q. Let's try to button it up with one more question, General, if we can.

A. Right.

Q. Do you know of any instance where a shipper was refrained from shipping through any of the three enumerated ports, do you know of your own knowledge, by reason of the inadequacies of banking facilities?

A. No.

Q. By reason of the inadequacies of foreign freight agents or forwarders?

A. No.

Mr. Brandes: That is all.

Exam. Boat: Any further cross?

Mr. Bongartz: Would this be a good time to adjourn?

Exam. Boat: I think we might. Do you wish to have the [fol. 567] General return after lunch?

Mr. Langdon: I have a few questions on redirect.

Exam. Boat: Maybe we could finish him up right now.

Mr. Langdon: We prefer to have lunch right now.

Exam. Boat: Well, I might bring up another matter.

Mr. Moore—off the record.

(Discussion was off the record.)

Exam. Boat: Very well.

On the record. We will recess now until 1:45 o'clock p.m.

Thereupon at 12:23 o'clock p.m. the hearing was recessed until 1:45 o'clock p.m.)

[fol. 568] AFTERNOON SESSION

(Pursuant to recess, hearing was resumed at 1:45 p.m.)

Exam. Boat: Come to order, please.

J. H. STRATTON a witness, previously sworn, resumed his testimony further as follows:

Mr. Langdon: I have only one question or possibly two, on redirect.

Redirect examination.

By Mr. Langdon:

Q. General, during the course of your cross examination I think you referred to differential rates at Baltimore,

Philadelphia and Hampton Roads being a competitive advantage.

Do you care to elaborate on that?

A. I think I said that was the only advantage, there being other advantages operating at these ports, also.

Q. Competitive advantages at other ports, such as New York, are competitive advantages other than freight rate advantages.

Mr. Moerman: Objection, Mr. Examiner. Redirect examination, I do not think may include leading questions.

Mr. Langdon: I will rephrase the question, then.

By Mr. Langdon:

Q. What are the competitive advantages at New York?

A. I had in mind in the previous testimony I referred to [fol. 569] the services enumerated in this large study.

Mr. Langdon: That is all.

Exam. Boat: Are there any further questions?

Mr. Walker: I have one.

Redirect examination.

By Mr. Walker:

Q. When Mr. Moerman asked you what, in your opinion, influenced the movement of something like one million tons, or a little over, to and from differential territory through Hampton Roads, and he also called your attention to the fact at the same time that over 2 million tons moved to and from differential territory through New York.

Under those conditions, New York today, under the differential rates, is getting more than twice as much as Hampton Roads from this territory.

What, in your opinion, would be the effect on a movement to Hampton Roads if the rates to Hampton Roads were increased or made the same as New York?

Mr. Foley: To that I object, Mr. Examiner. The witness has not been qualified for that.

By Mr. Walker:

Q. Let me ask this question: Based upon your studies and on your past experience, if you were a shipper located in differential territory, would you ship through Hampton Roads at the same rates as through New York?

Mr. Foley: To that I object, Mr. Examiner,
[fol. 570] Mr. Walker: I think he is perfectly capable of answering that question.

Mr. Foley: If he was a shipper—he certainly has no qualification.

Mr. Moerman: They did not call a single shipper.

Mr. Welsh: It depends on the commodities, if you please, sir. I can visualize there are a lot of commodities that would go through Hampton Roads, even at a difference in rates.

Mr. Walker: Mr. Examiner, this witness testified as to numerous advantages New York has over Hampton Roads, and Mr. Moerman brought out that under the present adjustment where Hampton Roads has a differential of 3 cents, that more than double the amount of traffic moves through New York under that adjustment as moves through Hampton Roads, and I am asking him, bearing in mind the advantages that New York has, whether, if he were a shipper, if he were advising a shipper, would he ship any traffic through Hampton Roads at equal rates.

Mr. Moerman: He told me he would charge a fee for that service.

Mr. Foley: Mr. Examiner, I object, the witness is obviously not qualified to answer.

Mr. Walker: I will ask for a ruling from the Examiner.

Exam. Boat: I think the question is objectionable because [fol. 571] there are all types of shippers, Mr. Walker. I do not know, can we have a question here that will be helpful.

Mr. Walker: I will take iron and steel.

By Mr. Walker:

Q. Iron and steel moving from differential territory, this record shows is probably 10 times as much moves through

New York as Hampton Roads, where New York has a 3 cent differential, bearing in mind that there are advantages in New York in service.

Would you think anything would move through Hampton Roads at equal rates?

Mr. Foley: Mr. Examiner, I object.

Mr. Walker: What is the ground for the objection?

Mr. Foley: He is not qualified to answer as a shipper. He is not a shipper.

Mr. Walker: I did not ask him to qualify as a shipper. He knows what the advantages are through New York, he testified, he has a whole book on the advantages.

I am asking him his opinion bearing in mind the advantages New York has over Hampton Roads, whether there would be any possibility of traffic moving through Hampton Roads at equal rates.

Mr. Welsh: The witness stated there are several factors some of which were imponderable.

Exam. Boat: That is correct. I think he could answer, but I do not know that it would be of much value.

[fol. 572] Mr. Walker: Let us see how he answers, and I will put the value on it in my brief.

Exam. Boat: All right.

The witness: With the removal of the differential, and the continuation of these advantages enumerated in services, I would expect, were I a shipper or were I advising a shipper that I would be tempted to load in and out through New York.

Recross examination.

By Mr. Brandes:

Q. Can you, Mr. Witness, explain the reason for the differences in shipments compared between Baltimore and Norfolk where there is no differential?

A. There again I think I would have to know the commodity and a number of other factors.

Q. You just testified did you not as to the comparison between Norfolk and New York. Is your knowledge of

Norfolk and New York greater than your knowledge of Norfolk and Boston?

Mr. Langdon: May I ask this question for my clarification as well as perhaps that of the witness?

Whom do you represent, sir?

Mr. Brandes: The City of New York.

The Witness: Of course there might be many factors that would influence that. It would take the general subject of more traffic. There might be better promotion on the part of the Baltimore people as against the Norfolk [fol. 573] people. It might be that the rail service at point of origin or point of destination favor the—

By Mr. Brandes:

Q. General, I am not asking you what it might be. Do you know.

You have testified, you have given your opinion with respect to the effect of the removal of the differential on traffic from Norfolk.

That, it seems to me, pre-supposes a knowledge of the conditions in the various ports. You previously testified that you could not tell why Baltimore received more, of your own knowledge—why Baltimore at similar rates received more traffic than Norfolk.

Now, do you know of a condition in the various ports?

A. You are asking for a generalized answer on some thing which is made of—made up of several types of cargo and tonnage, and were I to have that breakdown and study it, I think I could ascribe reasons, in specific form. But to do it in a general way, I would say all these thing collectively have influence—the rates on the one hand, in the one direction and the services in the other.

I think generally you will find, for example, if you will look through the book that we have presented, that Baltimore offers in relation to Norfolk or the Hampton Roads ports a better balance of services than found in the Hampton Roads ports.

[fol. 574] Redirect examination.

By Mr. Langdon:

Q. In answering that last question, General, did you know the equal rates from Hampton Roads equal that is to Baltimore, applied to only a very small part of differential territory?

A. Well, I might have known it at one time, but I do not think I had that fixed in my mind at this time.

Q. That might influence the movement of traffic through Baltimore and Hampton Roads, might it not?

Mr. Foley: I object. The witness said he did not know.

Mr. Langdon: The postulate for the question here was that equal rates applied to the entire territory to and from Hampton Roads and Baltimore, and you must know, Mr. Counsel, that the Baltimore rates apply to only a very small part of differential territory from Hampton Roads.

Mr. Foley: Baltimore or Hampton Roads.

Mr. Langdon: Hampton Roads.

Mr. Foley: I know the Hampton Roads rates apply to a very large part of it, 4-5ths of it.

Mr. Langdon: Four-fifths, my eye.

Mr. Moerman: Mr. Brandes, had you finished?

Mr. Brandes: I had concluded.

Exam. Boat: Are there any further questions? You are excused.

(Witness excused.)

[fol. 575] Offer in Evidence

Exam. Boat: Do you offer the exhibit?

Mr. Langdon: Yes, I should like to offer Exhibit 53, sir.

Mr. Moerman: Mr. Examiner, I should like to object and ask to have stricken that portion of the exhibit on page IV, at the opening, the first paragraph, dealing with the influence of services at New York on so-called large volumes of cargo for the reason that after an extensive cross-examination the witness was not able to substantiate what

be meant by "large volumes of cargo" and on the ground that for that reason the testimony is incompetent and ought not to be received in evidence on the ground that it goes to the weight of the evidence.

The point is, that the testimony has shown it to be incompetent, and therefore should not be made a part of the record in this litigation.

Mr. Langdon: I don't need to dignify that with a reply.

Exam. Boat: The objection will be noted, and it is overruled.

The exhibit will be received as No. 53.

(Protestant's Exhibit 53 Witness Stratton is received in evidence.)

Exam. Boat: I think we are at the point where we were digressing from the order that we have, is that right, Mr. Colgren?

[fol. 576] Mr. Bongartz: Mr. Clark is the next witness.

Exam. Boat: Yes, Mr. Clark was the gentleman you wished to have testify.

F. H. Clark a witness was sworn and testified as follows:

Direct examination.

By Mr. Bongartz:

Q. Mr. Clark, I show you a statement captioned with this proceeding entitled "Testimony of F. H. Clark", a statement consisting of 20 pages with an additional page for the verification, and ask you whether that is your statement?

A. It is.

Q. That is your verification attached to it?

A. Yes.

Q. You make reference in this statement to two exhibits?

A. I do.

Q. The exhibit entitled Illustrations of Some of the Services accorded by the Pennsylvania Railroad to export traffic originating in differential territory moving through the Port of New York?

A. Yes, sir.

Mr. Bongartz: May we have this statement and the other exhibit entitled "Port of Philadelphia Description of Pier Facilities"? May this statement which I am now handing the reporter be marked for identification?

[fol. 577] Exam. Boat: The statement and appended exhibits will be marked Exhibit 54.

(Protestant's Exhibit No. 54, Witness Clark, was marked for identification.)

By Mr. Bongartz:

Q. Mr. Clark, did you cause to be noted on this exhibit 54 some corrections?

A. I did.

Q. Will you please state for the record so other counsel may make the corrections in their copies what those corrections were?

A. Page 7, the first paragraph, the second line, 26 and ½ cents should be 26 cents.

Page 11, the period September 15 to October 1, 1956 should read September 25 to October 1, 1956.

Q. Yes, and on the map attached to the statement of facilities at Philadelphia, Pier 78 SVW, reading now the City of Philadelphia, B and O north side should be B and O South side and the B and O shipping company south side should read north side.

Mr. Welsh: That Pier 78, is that right?

Exam. Boat: Is that location in the—it is about the center of the left half of the map.

The Witness: Yes, sir. It is headed Pier 78 SVW.

Mr. Welsh: It should be what?

[fol. 578] The Witness: Just the reverse—just reverse the directions. The B & O should be on the south side and the B and O on the north side.

By Mr. Bongartz:

Q. Just one more question, Mr. Clark, before I tender you for cross-examination.

Mr. Clark, previously at this hearing witnesses for other railroads serving New York Harbor testified in answer to my questions regarding the amount of floating equipment which those railroads own and operate at New York Harbor.

Those railroads which have testified to that effect are the Lackawanna, New York Central, New Haven, as I recall it.

Will you undertake, if you have such information with you, to give the amount of marine equipment, by classes, of other railroads serving New York Harbor and in so doing, will you please state the source of that information?

A. Do you wish to exclude these three you mentioned?

Q. You might as well. There is no sense in repeating it.

A. The Baltimore and Ohio Railroad has—

Q. First, Mr. Clark, the source of your information?

A. That is a report by these railroads to the Association of American Railroads made twice a year. The information that I am giving is as of December 1, 1957.

Q. All right.

Now the B & O's first.

A. 7 tugs, 28 car floats, 6 steam diesel gas hoist lighters, [fol. 579] 74 covered barges, 25 scows, total, 140.

Mr. Costello: Excuse me; do you by any chance have any extra copy of that, then I will not have to take down all these notations?

Mr. Bongartz: I only have my own copy. I would be glad to let you borrow it and copy it if you will give it back to me.

Mr. Costello: I thought you might happen to have an extra copy here.

That is all right, go right ahead, I am sorry.

By Mr. Bongartz:

Q. If you will take up the Central of New Jersey.

Mr. Welsh: May I, before he leaves that, ask the number of covered Scows he mentioned?

The Witness: Not covered just the scows.

Mr. Welsh: How about the lighters themselves, the covered barges, how many did you mention?

The Witness: Covered barges, 74.

Mr. Welsh: 74, thank you.

The Witness: Central of New Jersey, 3 tugs, 8 car floats, 5 steam diesel gas hoist lighters, 13 covered barges, 13 scows, total 42.

Erie Railroad, 11 tugs, 26 car floats, 13 lighters—when I say lighters, now, I will omit that caption "steam diesel [fol. 580] gas hoist"—covered barges 97, scows 51, total 98.

Long Island, 4 tugs, 8 car floats, total 12.

Lehigh Valley, 8 tugs, 22 car floats, 27 lighters, 8 grain barges, 78 covered barges, 28 scows; total 171.

Pennsylvania 28 tugs 70 car floats, 2 self-propelled lighters—

Mr. Costello: Excuse me, I am interested in this figure. Will you repeat that again?

The Witness: 28 tugs, 70 car floats, 2 self propelled lighters, 18 other lighters, 12 grain barges, 127 covered barges, 63 scows, total 320.

We have some contract terminals, do you want that?

By Mr. Bongartz:

Q. In addition to that there are some contract terminals?

A. That is right.

Q. Did you mention the Reading?

A. No, I did not.

Q. Altogether, Mr. Clark, what does this report you mentioned show with respect to the amount of marine equipment in New York Harbor operated by the railroads serving the harbor?

A. There is a considerable number of them.

Q. What is the total, do you have the total there?

A. The grand total altogether including the contract terminals are 1392 pieces.

Q. 1392 pieces of marine equipment in New York Harbor [fol. 581] all operated by the railroads?

A. Including the contract terminals.

Q. In contrast to this number of pieces of marine equipment in New York harbor, owned and operated by the rail-

roads, how much such equipment is there in Philadelphia and Baltimore?

A. Philadelphia, 47, Baltimore 48.

Mr. Costello: Philadelphia 47.

The Witness: 47.

Mr. Costello: And Baltimore?

The Witness: 48.

Mr. Costello: Is that for all the railroads?

The Witness: That is right.

Mr. Bongartz: The witness is tendered for cross examination.

Cross examination.

By Mr. Welsh:

Q. To clarify the record if I might ask my question again. The so-called contract terminals, some of which are not contract terminals at the present time, are not the same as the trunkline railroads to which you referred before, are they?

A. Well, they are terminals that receive and handle freight by carfloats, and to d that have their own equipment.

Q. Do they all handle export and import freight?

A. Yes, my understanding is they do.

[fol. 582] Q. Do you know of your own knowledge whether there are any export and import rates effective to the Brooklyn Eastern District Terminal?

A. Not as to rates, I can't answer.

Cross examination.

By Mr. Costello:

Q. Mr. Clark, just to go back to that list again, I missed one figure. The total, for the B & O in New York Harbor?

A. 140.

Q. Mr. Clark, I note from your statement that on July 1, 1957, you became a retired employee of the Pennsylvania Railroad?

A. Yes, sir.

Q. Since that time here what has been your employment or occupation?

A. Consultant.

Q. To whom?

A. To anyone who wants to hire me. At the present time it happens to be the Pennsylvania Railroad.

Q. Mr. Clark, does the Pennsylvania Railroad have pier stations in New York Harbor?

A. Yes, sir.

Q. I would like you to just briefly—are they confined to the Island of Manhattan?

A. What do you mean when you say pier stations, you [fol. 583] include only those at which ships dock?

Q. Pier stations.

A. We have lighterage piers on the Jersey side.

Q. I refer to all of them. I see you have the map of New York Harbor there in front of you?

A. Yes.

Q. With respect to the—suppose first of all we take the pier stations of the Pennsylvania on the Island of Manhattan.

I wonder if you would just briefly describe what they are, and where they are located?

A. We have piers 27, 21 and 29.

Q. Just a minute, 27, 28 and 29.

That is on the North River?

A. That is on the North River on the east side, in other words, the Manhattan side. Those are the perishable terminals.

Q. That would be just a little below the notation on the map shown as Holland Tunnel, would it not?

A. That is right.

Q. I would just like to ask you a few questions about each one of these as you go along, piers 27 and 28, are those the perishable piers?

A. Yes, sir.

Q. How about 29?

A. I understand, the bulkhead of 29 is at Des Brosses Station.

Q. In connection with Piers 27 and 28, most of the traffic [fol. 584] or practically all of the traffic there is in connection with fruits and vegetables, is it not, which is domestic traffic?

A. Yes, that is right.

Q. So any of the marine equipment of the Pennsylvania Railroad that services piers 27 and 28 likewise would be engaged in handling domestic traffic?

A. Are you differentiating on domestic now between fruits and vegetables and other than fruits and vegetables?

Q. No, between domestic traffic on one hand and export-import traffic on the other?

A. This equipment would be used for whatever was necessary, for whatever was required, domestic or export.

Q. I mean in connection with the car float movements in connection with piers 27 and 28, the car floats and tugs going to and from piers 27 would be in domestic traffic?

A. That is right.

Q. What type of traffic is handled at Pier 29?

A. That is other than perishable traffic.

Q. I take it that domestic traffic is also handled at pier 29, Mr. Clark?

A. Some, and also import and export.

Q. All right.

Would you please continue to the next pier?

A. At 37th street, which is located under—to the right of the designation Lincoln Tunnel—actually pier 77.

[fol. 585] Q. What type of traffic is handled there? I mean what commodities, if you know, Mr. Clark?

A. Well, 37th Street is our team track delivery into Manhattan Island, and also piers are occupied by forwarders to whom the freight is delivered and received by way of car floats.

Exam. Boat: Speaking of freight forwarders now?

The Witness: That is right.

Exam. Boat: That is predominantly handling domestic traffic?

The Witness: There could be some export and import in there, but primarily it would be domestic.

Mr. Costello: In connection with your team track deliveries at 37th street, I take it those would be predomi-

nantly or practically all domestic shipments, would they not?

The Witness: That is correct.

By Mr. Costello:

Q. Please continue.

A. Piers 49 and 50, that is at West 12th Street.

Q. At West 12th Street and can you tell me what type of traffic is handled over those piers, through those piers?

A. There is import and export traffic handled through Pier 50, most of it import truck traffic.

Q. Some domestic traffic, too, Mr. Clark?

A. I think there is a little there.

Q. How about 49?

[fol. 586] A. 49 is an adjunct of 50, practically the same characteristics as 50.

Q. All right, your next?

A. That is all on that side of the Manhattan Island.

On the left side, on the Jersey side—I am speaking now only of the piers in connection with this case—for instance, we have a coal pier there.

Piers L and K are covered lighterage piers. They are somewhat south and left of Holland Tunnel designation.

Q. Mr. Clark, have you described these in your statement as Jersey piers?

A. I believe I have.

Q. I don't think it will be necessary then to go into that at this time.

Are there any further pier stations on the east side of Manhattan or in Brooklyn of the Pennsylvania Railroad?

A. No, there are not.

Q. So the ones you have given us on Manhattan are the sum-total of the pier stations in Manhattan, is that correct?

A. That is right.

Q. Beside those and the Jersey Pier stations, are there any other in New York Harbor?

A. Of course Jersey City includes Greenville. They also are described in my statement.

Q. Yes, sir.

[fol. 587] Q. Mr. Clark, could you give us a breakdown by cars, if you have it, by cars floated to these various piers, as to whether they are export-import cars, or domestic cars for a period of time such as the year 1956 or a month in the year 1956?

A. No, I do not have such a figure. It would have to be worked up.

Q. You just stated in giving this enumeration of marine equipment that the Pennsylvania has 70 car floats in New York Harbor, wouldn't it be a fair statement to say, Mr. Clark, that car floats are used chiefly in connection with domestic traffic, particularly regarding the servicing of your New York pier stations?

A. The greatest proportion of the time would be in domestic.

Q. Isn't it a situation, too, Mr. Clark, that your barges are used also in addition to being used in connection with export-import deliveries—are also used for local lighterage deliveries in New York Harbor in connection with shipments of such commodities as cement and steel?

A. Well, that is true but the proportion—in fact, speaking of other equipment besides car floats—

Excuse me, Mr. Clark, would you just mind answering my question?

Mr. Bongartz: He was trying to until you interrupted him.

Mr. Costello: No, he was going far afield there I am [fol. 588] afraid.

I did not want to get into some other phase of it.

Mr. Bongartz: You just did not want the answer.

Mr. Costello: Maybe it would be helpful if you just read the question back to the witness, Mr. Reporter.

Exam. Boat: Please read it.

(Question read.)

Mr. Bongartz: Are you talking about grain barges in that question, Mr. Costello?

Mr. Costello: I had particular reference to shipment of such commodities as cement and steel.

Mr. Bongartz: You used the term "barges," and I wondered what you had in mind.

The Witness: Could you let me finish my answer?

By Mr. Costello:

Q. Yes.

A. Barges are not used in any proportion as car floats are used for the domestic deliveries.

Q. I note, too, that the Pennsylvania has 28 tugs.

Isn't it a fact, Mr. Clark, that four of these tugs are used exclusively for the towing of coal barges from Perth Amboy which is domestic traffic?

A. No, that is not true.

Q. It is not true?

A. No, they use two tugs.

Q. Isn't it a fact that some time ago that you were using [fol. 589] four if we got the business.

How many years ago were you using four tugs?

A. I do not know, quite a few.

Q. You previously testified—strike that.

You did previously testify that car floats are used chiefly in connection with domestic traffic.

It would also stem from that answer, wouldn't it, Mr. Clark, tugs are used in connection with towing such car floats, which are likewise used in connection with domestic traffic?

A. Tugs are used in the towing of car floats, but that would not necessarily mean the tug time is anywhere near comparable to the car float time in domestic service, because naturally the tug leaves the car float and goes about its business.

Q. Yes, but nevertheless the tugs to these car floats which are used in domestic traffic,—

A. They do, but the proportion of time—

Q. Excuse me. I think you have answered my question, Mr. Clark.

And this also follows along the same line.

On page 3 of your statement and other pages, you refer to transfer bridges:

Isn't it a fact these transfer bridges or float bridges are used in connection with car float operations?

[fol. 590] A. That is their purpose.

Q. Mr. Clark, doesn't the Pennsylvania Railroad have a large interchange of domestic—

A. Beg pardon, I didn't hear that.

Q. Surely, I will repeat it again.

Mr. Clark, isn't it true the Pennsylvania Railroad has a large or an extensive interchange of domestic car-float traffic with railroads at your general Greenville yard piers?

A. There is considerable freight through Greenville, yes, sir.

Q. Including a large interchange with the New Haven Railroad which is all domestic traffic?

A. Which is accomplished by New Haven floats?

Q. Yes. But you have a large interchange there, do you not?

A. We have a large interchange, a lot of New England freight moves through Greenville—most of it.

Q. What other railroads do you interchange traffic therewith?

A. The Long Island Railroad, through Long Island car floats.

Q. Any others?

A. The contract terminals through their floats.

Q. And what others, enumerate the others?

A. There are no others.

Q. Would it also be correct, Mr. Clark, that a considerable portion of your westbound domestic car float traffic is [fol. 591] handled through the Harsimus Cove Yard at Jersey City?

A. Yes, that is from Manhattan Island, I presume.

Q. Yes.

And wouldn't it be correct to say that the 7 transfer bridges at Harsimus Cove Yard and the five transfer bridges at Greenville Yard are used in connection with the domestic car float traffic?

In other words, the float bridges?

A. They are used in domestic freight traffic. There would be some export-import traffic in there, too.

Q. In connection with your Greenville yard, Mr. Clark, are your facilities there used in part for the storage of steel and other articles used by local contractors in the Manhattan area?

A. They are.

Q. Mr. Clark, turning to page 5 of your statement, and the table that you show thereon, wouldn't it be a fair statement that if the ore and grain tonnages were added to those shown on page 5 that the total tonnage at Philadelphia and Baltimore would exceed those at New York?

A. I don't know about exceeding, they certainly would be greater at Philadelphia and Baltimore.

Q. You would not deny, though, they would be larger than the tonnages at New York, would you?

A. I don't—

[fol. 592] Mr. Bongartz: I think the witness has answered the question.

By Mr. Costello:

Q. Well, would you deny that, Mr. Clark?

A. I can't either say one way or the other, when I haven't seen the figures.

Q. Mr. Clark, you show down near the bottom of that table, if you will take a look at that, domestic amounted to, at New York, 161,603 tons, and this table covers the year ending August 31, 1956.

I wonder if you would please explain just what that figure includes?

A. You mean as to commodities and so on?

Q. Well, yes.

A. I am afraid I can't do it. I don't have the details here with me. I only have the total figure.

Q. Well—

A. It no doubt has lumber, and stuff of that type. Lumber is one of the commodities.

Q. Does it include your fresh fruit and vegetable traffic that goes to Piers 27 and 28?

A. Frankly I do not know, it probably does.

Exam. Boat: The caption indicates through the Port of New York.

The Witness: Sir?

[fol. 593] Exam. Boat: The caption indicates through the Port of New York.

By Mr. Costello:

Q. That would not by any chance have something to do with intercoastal traffic, would it?

A. Of course the primary purpose was to show traffic moving export-import, and we added the domestic, therefore there is the additional item.

I do not have any breakdown that shows that particular factor as to the commodities.

Q. Well, frankly, Mr. Clark, I am very much surprised at this figure because from a little investigation I made I understand that the Pennsylvania handles fruits and vegetables alone which are domestic over 200,000 tons a year.

That is why I can't understand that figure of 161 which you say includes everything.

A. Well, I can't make any better answer than I have given you at the present minute.

Q. I wonder, then, if you would mind checking into your working papers on that and let me know maybe by the time of the adjourned hearing just what that figure includes and the breakdown on it.

A. The next hearing?

Q. The next hearing, yes.

A. I will do that.

Q. Mr. Clark, I wonder if you would look at your exhibit [fol. 594] FHC-1 which has illustrations of some of these services accorded by the Pennsylvania Railroad?

Looking at these in the context of the movement from the Pennsylvania Yard to the destination, I wonder if you would go down that list and tell us approximately how far distant—what the approximate distance of these movements is.

For example, on tin plate, we have a movement from Harsimus Cove to Pier 60—North River.

A. Well, you can scale your port map, if you want us to take the time to do it.

Q. Yes, approximately.

A. Harsimus Cove to Pier 60?

Q. Yes, your exhibit shows the first movement is from Harsimus Cove on this tin plate to pier 60, North River?

A. Yes, it is something better than two miles.

Q. How about the next one, Ostoves, from Harsimus Cove to Pier 3 of Bush Terminal?

Mr. Bongartz: Is that the first one, Mr. Costello?

Mr. Costello: Well, it is trucking in lieu of lighterage.

Mr. Bongartz: I see, started at Pier 60?

Mr. Costello: That is right, I am interested in the Marine equipment movement.

The Witness: That is about 5 miles.

By Mr. Costello:

Q. And then the next one?

[fol. 595] A. That would be approximately the same.

Q. And the next one, from Harsimus Cove to Pier 61 that would be about 2 miles?

A. That is right.

Q. From Harsimus Cove to Pier 14, North River, that would probably be another 2 miles or less?

A. That is about right, it is about the same distance as at the 60th pier.

Q. In connection with this move of stoves from Harsimus Cove to Pier 3 in the Bush terminal, who performed that move?

Is that with your equipment?

A. Yes, all this would be our equipment.

Q. Mr. Clark, does the Pennsylvania Railroad handle any so-called wheel to keel traffic in connection with this export-import business, or domestic, to or from Port Newark?

A. That is a new term "wheel to keel".

Q. I just picked that up myself, too.

A. We handled—

Q. A direct transfer, in other words, Mr. Clark.

A. We handle traffic at Port Newark.

Q. In this type service, the direct transfer that I was talking about from the rail car to the ship?

A. To the ship.

Q. Have you any idea how much tonnage the Pennsylvania handled in that fashion to or from Port Newark last

year, or in 1956?

[fol. 596] A. I have no idea of the figure, but I don't think it was very much.

Q. This is a situation where Port Newark is developing at the present time, isn't it?

A. It has been developing for a number of years.

Q. Yes, I take it probably your tonnage would increase as the years go on?

A. We want the tonnage to increase no matter where it goes.

Q. Mr. Clark, on page 9 to 10 you describe some of the switching operations performed by the Pennsylvania in connection with the handling of this export and import traffic involved in the four yards of the Pennsylvania.

Would you say that this operation that you have described, from an operating standpoint, is a simple operation or a complicated operation?

A. It is not simple.

Q. I would just like to clarify one point.

At the bottom of page 8 and the top of page 9, you talk about this Waverly Yard.

I sort of gained the impression from it that actually it is not too much involved in this export-import traffic except to the extent some of the trains just pass through it, but that there is not much operation in the yard itself, am I correct or incorrect?

[fol. 597] A. Waverly is involved 100 percent so far as Port Newark is concerned.

Q. About which you said there was very little traffic, is that correct?

A. At the present minute?

Q. Yes.

A. It is involved so far as export or import through Harsimus Cove or Greenville are concerned, i. that for example export traffic that would route through Harsimus Cove yard, and is moving to Jersey City in a Greenville train, must be set off at Waverly to be moved from that yard, and vice versa if it is going to the Greenville yard.

Q. Mr. Clark, I do not think you were probably—

Mr. Bongartz: Pardon me, just a moment.

(Discussion was off the record.)

Exam. Boat: On the record.

By Mr. Costello:

Q. I just wanted to ask you one further question, Mr. Clark, in connection with your last answer.

Why is such an operation necessary?

A. It is just a common-sense operation. These trains are coming from Enola Yard near Harrisburg. If the next train out is a Greenville train, and you can handle traffic that is routing through Harsimus Cove in that train it is just common-sense to put it in and set it off at Newark. The next train is a Harsimus Cove train and the export [fol. 598] traffic is going through Greenville under the same conditions you would do likewise. Or, if it is traffic coming from the Far West like St. Louis or Chicago, it happens to be in the through train coming all the way into New York, with traffic for, say, a routing through Harsimus Cove for export, but actually the train is a Greenville train, it is just common sense to leave it in that train and send it on to Waverly.

Q. All of these yards you mentioned are likewise included, of course in connection with the handling of domestic traffic into New York Harbor?

A. That is right.

Q. I do not think you were in the room the other day when some of the respondent railroad witnesses were discussing their own operations.

For example, the Lackawanna Railroad witness stated that in connection with his export-import operations, that the Lackawanna Trains are brought directly into their Hoboken Yard, where they are broken right up there and switched directly to the piers or to the car floats.

Now, I think you will probably agree with me that is quite a simple operation, is it not?

A. No, it is not.

Q. It is not?

Q. Any train that yards in a waterfront yard is not a simple operation to break up.

[fol. 599] Q. Well, let me put it this way—

A. And I think the Lackawanna illustrates that very well, by the fact it is backed up by the Palisades, you do not have enough room to do your work.

Q. When was the last time you were over in the Lackawanna yard?

A. A couple months ago.

Q. I was over there just about a couple of weeks ago, Mr. Clark, and to me it seemed to be a very simple operation. These cars come directly into our yard—

Mr. Bongartz: Are you testifying or are you asking the witness a question? You asked him a question, you are not satisfied with it, then you ask another.

The Witness: You have never got the responsibility of breaking up those trains, or you would not say that.

Mr. Costello: Our operating man told us it was a very simple operation.

Strike that.

By Mr. Costello:

Q. Our witness said it was a very simple operation, testifying here several days ago.

Mr. Bongartz: He did not say it was a simple operation.

Mr. Costello: He certainly did, Mr. Bongartz, I am sorry.

Mr. Bongartz: Let the record speak for itself. If you have questions to be directed to this witness, do so.

[fol. 600] Exam. Boat: Let's confine ourselves.

By Mr. Costello:

Q. Mr. Clark, wouldn't you say the Lackawanna operation is simpler than the Pennsylvania operation you described in your statement?

A. No, it is not.

Q. The Lackawanna operation only involves, does it not, a situation where the road haul cars are brought directly into the Hoboken Yard of the Lackawanna, are they not?

A. I wish I had the opportunity to answer a couple of questions.

Mr. Costello: Just a minute, that question is susceptible of a yes or no answer.

Mr. Bongartz: If you will keep quiet for a moment, and let him answer the question—

Mr. Costello: I am sorry, Mr. Bongartz, I am cross-examining Mr. Clark. I know the fact that Mr. Clark has been testifying in these cases ever since I was a little boy, he certainly knows how to handle himself on cross-examination—

Mr. Walker: You would not give him a chance to answer.

By Mr. Costello:

Q. Mr. Clark, I wonder whether we could get back again to the last question.

A. I am perfectly willing to discuss it with you; go ahead.

Q. No, I do not want a discussion, I want a yes or no answer, or a brief answer.

A. I have forgotten the question.

[fol. 601] Mr. Costello: So have I. I wonder if you would please read the question.

Exam. Boat: I think we would make more time here if we were more direct and forthright here.

(The question was read back.)

Mr. Costello: Mr. Examiner, I submit that question is susceptible of a very simple answer, without any discussion, a yes or no answer.

The Witness: You are asking me whether the Lackawanna brings their trains into Hoboken Yard.

By Mr. Costello:

Q. That is right.

A. That pre-supposes all trains.

Q. I am talking about—I am sorry, I will confine it to the trains, the type of traffic that is particularly involved in this proceeding, the export-import traffic.

A. I am in no position to contradict the Lackawanna Railroad operating officer. My understanding is the Se-

caucus Yard is also a breakup yard for the Lackawanna trains. He may bring in one or two trains, the same as we do on the Pennsylvania, but we set out the export-import traffic before we hit Harsimus Cove Yards.

Q. You do not know that as a fact; though, do you, that those cars are set off at Secaucus Yard?

A. You mean the export-import cars?

Q. Yes.

[fol. 602] A. No, I cannot say that as a fact. I do know they set cars off there.

Q. Yes. But you would not deny the fact that, if I made the statement that the Lackawanna Railroad-haul cars are brought directly into the Hoboken Yard?

A. I can't contradict it because—

Q. All right, if you can't contradict it, we will accept that as an answer, Mr. Clark.

You stated in your statement that the Pennsylvania has four yards that are involved in this traffic?

A. Yes, sir.

Q. And even including the Secaucus Yard of the Lackawanna, that would mean two yards for the Lackawanna, would it not?

A. That is right.

Q. Now with respect to the Erie Railroad, isn't it a fact that the Erie brings in their line-haul cars rectly to Croxton Yard, where they are broken up and part of them switched to Weehawken and the remainder to their Jersey City Yards?

A. Croxton Yard is their main breakup yard.

Q. Yes. In connection with the Lehigh Valley Railroad, aren't their line haul trains brought directly into the Oak Hland yard, where they are broken up and moved into the lighterage piers, their Claremont terminal in Jersey City?

A. That is right.

[fol. 603] Q. Mr. Clark, am I correct in stating that the Pennsylvania Railroad uses a private contractor to perform loading and unloading of foreign freight traffic at New York whereas many of the other railroads use railroad labor?

A. The Pennsylvania hires contract labor, but I would not say the others do—some of them do.

Q. Well, the Lackawanna does, does it not?

A. I understand they do.

Q. And the New York Central?

A. I can't say.

Q. And the Erie?

A. The Erie uses their own labor.

Q. And the C.N.J. and B & O?

A. Yes, the B & O does. I am not so sure about the Central of New Jersey.

Q. It is a fact the Lackawanna uses railroad labor?

A. Yes.

Q. So does the Erie and the B & O, isn't that correct?

A. That is right.

Q. You were not sure about the New York Central, is that correct?

A. Or the Central of Jersey.

Q. Or the Central of New Jersey.

Am I correct in stating that the Erie Railroad has a direct rail connection with the Hoboken shore Railroad?

[fol. 604] A. Yes, sir.

Q. And did your investigation indicate that the Erie handled a considerable portion of foreign traffic direct from wheel to keel via this connection?

A. I don't know what the Erie handles.

Mr. Bongartz: Maybe Mr. Frauson's statement will help you in that connection. Do you have it there?

The Witness: He does not state as to that.

By Mr. Costello:

Q. Mr. Clark, looking again at your exhibit that we previously looked at about the services performed by the Pennsylvania Railroad, looking at this, this third from the last column on the right about capacity of lighter tugs, isn't it a matter of fact that figure really is of not too much significance, except in context with some particular commodity? For example, you have shown movements of bottles, and you have shown there the capacity of the lighter was 400 tons. It would be a physical impossibility to load 400 tons of bottles on a lighter, would it not?

A. This is the situation as it is. You have to build a lighter capable of holding 400 tons, regardless of what you have to put on it.

Q. That is right.

Is it not a fact—

A. The investment is there.

Q. Isn't it a fact the cubic capacity is a more decisive [fol. 605] figure in determining how heavy a commodity can be loaded into a lighter?

A. No, I do not think so, in connection with floating equipment.

Q. Looking at the fourth column from the right, the total tons on the lighter. I have not added those up, but it looks like the average might be, I do not know, around fifty or sixty, possibly less.

Did you make any investigation as to what the average tons per lighter handled by other railroads in the harbor was, for example, the Lackawanna?

A. Not as to this particular case, but in previous cases we have done that. And the figure will be somewhat like the one we are giving here.

Q. I will ask you, then, if you have made that, would you agree with my statement that the Lackawanna handles an average of about 105 tons per lighter in their marine operations?

A. Well, if you have the figures that indicate that, certainly I am not going to contradict them.

Q. I am asking if you know it.

A. I do not know of any of my personal knowledge. I presume that is some late figure.

Q. That is right, it has been furnished to me.

A. It does not register in my mind of past years' experience as being that high.

[fol. 606] Q. Turning now to Philadelphia, Mr. Clark, I think you mention that Philadelphia is served by three railroads, the Pennsylvania, the B & O and the Reading?

A. Yes, sir.

Q. Isn't it a fact, too, the port area is also served by the Pennsylvania Seashore lines?

A. On the Camden side.

Q. Yes, and how about the Beltline Railroad, that also operates in the port, does it not?

A. That operates along the Delaware Avenue.

Q. Along Delaware Avenue?

A. Up into the Northeast part of the City—in other words, along the river.

Q. Turning to—

A. Are you through with the map?

Q. Yes, I think we are through with New York, Mr. Clark.

Turning to this second exhibit of yours of EHC-2, on the first page there, where you describe the facilities of the Pennsylvania in Philadelphia, I wonder if you could tell us something about the personnel, about the railroad personnel that is used in connection with some of these facilities for example, under the heading "The Pennsylvania Railroad," in the second paragraph, in connection with the Girard point area you say this terminal includes an ore pier—let's stop right there.

[fol. 607] What kind of railroad personnel are used in operating that pier?

A. It is operated under contract.

Q. It is sort of a cost-plus contract?

A. I don't know what the terms of it are.

Q. So it is operated by the personnel of this contractor, is that correct?

A. That is right, yes.

Q. How about this grain pier at Girard point?

A. Likewise, the same way there. It says on the map, the Western Stevedoring Company.

Q. It is shown on the map?

A. Yes.

Q. Would that pertain to also the facilities at the Coal Pier, and the ore pier and Greenwich point?

A. That is right.

Q. And the ore-handling facility at Pier 122, south?

A. That is what I understood you meant by your question, the ore pier, Greenwich point, you said. The answer is yes, anyway.

Q. My previous question had to do with Greenwich point and the facilities that you outline in your third paragraph.

My last question related to the last paragraph on the first page.

A. That is right.

[fol. 608] Q. These grain elevators in Philadelphia, are they used for storage as well as for elevation?

A. Yes, sir.

Q. And do the railroad-line haul rates include unloading the cars into the elevators by the railroads?

A. When you get into rate matters, you had better let me out of it.

Q. Well, you are pretty knowledgeable about these affairs, Mr. Clark.

A. Then I will say I do not know.

Q. You don't know.

A. No.

Q. Well, do the railroads—we will leave out the rate angle of it then—do the railroads unload the cars of grain into the elevators?

A. Do you mean physically?

Q. Yes.

A. Well—

Q. Or is if done by the contractor?

A. It is done by the contractor.

Q. Now, these various piers that you have described in Philadelphia, I take it that the piers that have to be dredged at the railroad expense—

A. If they are railroad piers.

Q. Yes—at the railroad expense.

[fol. 609] A. Do you mean the railroad piers only?

Q. Yes, at the railroad piers?

A. Yes, sir.

Q. How often do these have to be dredged, if you know?

A. Well, at the present time I do not think there is much dredging on our railroad piers.

Q. That is because of your austerity program, right?

A. Well, the non-use of them, also.

Q. What particular pier did you have reference to?

A. For example, 11, 13 and 14, that is really our Walnut Street Freight Station, which has been discontinued.

Q. How about the other piers that are in use?

A. Pier 46 has been partially burned down.

Q. How about the piers that are in use, that are being used?

A. If there is any dredging required, it is done, but I can't answer as to whether there has been anything done later or not.

Q. Now, in connection with the handling of Pennsylvania trains containing blocks of export-import traffic into Philadelphia, Mr. Clark, do all of these trains pass through your yards at Harrisburg?

A. That would depend on where they are coming from, of course.

Q. Well, from differential territory?

[fol. 610] A. From differential territory?

From differential territory, to Philadelphia, yes, most of them would be through—not Harrisburg, through Enola.

Q. Through Enola Yard?

A. Which is across the river from Harrisburg.

Q. I see, all right.

After these trains containing export-import cars leave Enola Yard, I wonder if you would just briefly describe the passing of these yards, the passing of these cars along the Pennsylvania Railroad into Philadelphia?

A. I believe that is already described, is it not?

Q. I would just like to have it perhaps in a little more detail.

What is your first breakup yard?

A. These trains are destined to Greenwich Yard, which is at what you call here Greenwich Point, practically, you see the trackage on the map.

Q. Just a minute. I would like to get that map.

Where is that Greenwich Yard again?

A. See Greenwich point that you are speaking of a minute ago?

Q. Yes.

A. The yard tracks beyond?

Q. I tell you, I would like to just go back a little further, [fol. 611] if I may, Mr. Clark. I want to go just back a ways.

Before you get to that break-up yard at Greenwich point, as you call it, these trains would pass through your computation area known as the main line, would they not, where there is heavy commutation service?

A. They would pass from over the main line passenger route from Paoli.

Q. How many miles is that?

A. That is approximately 20 miles from the City of Philadelphia, and then they move over to a freight elevation line.

Q. I wonder if you would just pause there a moment? I think you probably would feel disappointed if I did not ask you something about this elevated trackage.

I wonder if you would tell in a little more detail what that elevated trackage is, how long it is, and just what sort of structure it is. I have never seen it myself.

A. These trains enter Philadelphia at Overbrook, then proceed to about, well, around 34th or 46th street, where they enter on the elevated line.

That elevated line has been constructed primarily for the handling of freight service to keep it out of the passenger routes and the surface operation.

Q. What kind of an area does this elevated trackage pass over, Mr. Clark?

A. This is over the streets of Philadelphia past our 30th [fol. 612] Street Station, for example.

Q. And about how long is this elevated trackage?

A. Well, a guess: It is around six or eight, or ten miles; I do not have it in mind exactly.

Q. How high is it from the surface of the streets?

A. That would vary according to what you are crossing.

Q. Well, approximately?

A. In fact, there are no known impediments.

Mr. Bongartz: He said it varied.

By Mr. Costello:

Q. What is the variation, then, from how many feet to how many feet?

A. I do not know what the elevation is. It is sufficient to clear any obstructions that have ever shown up.

Q. All right. We got into, I believe, mentioning of the Greenwich Yard. How about this Penrose Yard? Where is that located?

A. I will look at the map again.

You will find it is in trackage there underneath the designation "Pier 2, Girard Point."

Q. Oh, yes.

A. That and tracks to the right there.

Q. Are the Penrose Yards. They are involved in this export-import traffic, are they not?

A. Wherever, for example, if there is grain exported, to be set off at Penrose Yard, because the grain elevator is [fol. 613] located over there at Girard Point, it is set off at Penrose Yard, and moved over as you can see the trackage represented on the map, to the elevator supporting yards.

Q. Now, in addition to this Greenwich yard which you began to mention, there are certain other yards located in Philadelphia, are there not, other Pennsylvania yards?

A. Many other yards.

Q. Such as 52nd Street yard, Gray's Ferry Yard, and the Frankfort Junction Yard?

A. Those are some of the yards. We have about 50 yards, if you want to go that far.

Q. About 50 yards.

A. Including our auxiliary yards and all.

Q. Are those all located within the City limits of Philadelphia?

A. I would say yes.

Q. Mr. Clark, would you tell me what lighterage equipment the B & O railroad and the Reading Railroad have at Philadelphia, if you know?

A. Yes, I can.

The B & O have two tugs, 5 car floats, the Reading has 4 tugs, 19 car floats, 5 covered barges, 7 scows, a total of 35.

Q. Total of 35 for the Reading and 7 for the B & O?

A. Yes.

[fol. 614] Q. So, I take it from that that apparently the Reading does more lighterage at Philadelphia than perhaps the B & O and the Pennsylvania Railroad?

A. It sure does.

Q. Am I correct, Mr. Clark, that free lighterage is provided at Philadelphia by the railroads under certain circumstances?

A. It meets the 26-cent rate.

Q. The 26-cent rate?

A. Yes.

Q. That service is performed at the railroad's expense?

A. In-shore.

Q. In-shore?

A. Yes.

Q. Am I correct, Mr. Clark, that at Philadelphia the railroads assume the cost of loading and unloading export-import freight at the shore side with the exception of open-top equipment?

A. That is right.

Q. And at Philadelphia, do the railroads hold themselves out to make split deliveries on export shipments at the shipper's request?

A. Yes, sir.

Q. And two of these are free, and additional ones up to 5 are at a charge?

A. As I already stated in my prepared testimony, that is right.

[fol. 615] Q. Thank you, Mr. Clark. I probably missed it.

Now, with respect to free time at the Port of Baltimore, the railroads there provide 7 days' free time on export general cargo, and 5 days on import cargo, do they not?

A. They same.

Q. The same as at New York and Baltimore?

A. Yes.

Q. It is all competitive?

A. Yes.

Q. Now, in connection with dockage, Mr. Clark, as I understand the situation that there are no dockage charges that are assessed against the berthing of vessels at railroad-owned or operated piers in Philadelphia, is that correct?

A. That is my understanding.

Q. So that this service is performed or tendered, as it were, at the railroads' own expense?

A. Well, there is no charge.

Q. There is no charge for it, that is correct, and this contrasts, does it not, with the situation at the public or

privately-owned, piers in Philadelphia where charges are assessed?

A. I don't know.

Q. You don't know that?

A. No, sir.

Q. —important question?

[fol. 616] Exam. Boat: We will recess for 10 minutes at this time.

(A brief recess was taken.)

Exam. Boat: Come to order, please.

By Mr. Costello:

Q. Mr. Clark, to go back to that subject of split deliveries in Philadelphia just for a moment. I wonder if you would please just briefly describe how the railroads make split delivery shipments on export shipments in Philadelphia?

A. Well, if you will look at page 11 of my statement, you will find while the rule is there the application of it has not been applied. There were not any split deliveries in the test I made.

Q. Well, if you or the B & O or the Reading had split deliveries, I wonder if you could tell us—does it involve switching of your cars to and from the piers, is that it?

A. The cars would have to be switched to some point where the lading could be segregated between the points of destination requested by the shipper. That necessarily means, of course two or more rehandlings according to his requests.

Q. Mr. Clark, I am going to read a statement to you from page 42 of a booklet that is published and gotten out by the Delaware River Port, Philadelphia, Delaware River Port Authority, and on page 42 it states as follows concerning dockage and wharfage:

"At public and privately-operated terminals in the port [fol. 617] area, dockage charges are assessed against vessels for the privilege of berthing or making fast to the port, pier or dock. These charges range from 3 cents to 4 cents per net registered ton per calendar day, or 24-hour period,

or fraction thereof. Usually there is a minimum charge per calendar day or 24-hour period."

Now, does that sort of refresh your recollection? Would you agree that is a correct statement, Mr. Clark?

A. As I said before, I was not familiar with that, and I still say I am not. Whoever made that statement is the one to question.

That the question should be addressed to whoever made the statement is my opinion.

Q. You do not deny the correctness of that statement?

A. I have no reason to deny it or to accept it.

Q. Now, as I understand, in connection with wharfage charges, that there are no wharfage charges assessed by the railroads on cargoes moving by rail service at Philadelphia, is that correct?

A. I don't know of any.

Q. And do you know that such charges are assessed at other terminals, other than railroad terminals in Philadelphia? I have reference to wharfage charges.

A. I am in the same position as on the dockage.

Q. So; if I read that portion from this booklet, your [fol. 618] answer would be the same as the previous answer in connection with dockage?

A. Yes.

Mr. Price: May I interrupt and ask the date of that book you are reading from?

Mr. Costello: I notice that on page 2 it says it is copyrighted 1956 by Delaware River Port Authority.

Mr. Price: Thank you.

By Mr. Costello:

Q. Mr. Clark, you can put away your Philadelphia map, I think, we will go on to Baltimore.

Exam. Boat: Mr. Costello, will you be taking some time yet?

Mr. Costello: Yes, I would think so, Mr. Examiner, probably another half an hour or three-quarters of an hour.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

By Mr. Costello:

Q. Mr. Clark, my next series of questions will be addressed to the Port of Baltimore.

Would it be a fair statement to say that the facilities at the Port of Baltimore include piers, wharves, and docks in excess of 250?

A. I do not know what the figure would be.

Q. There is an extensive number there, of such facilities, are there not?

[fol. 619] A. That is right, they include private as well as railroad facilities.

Q. Yes, now the railroads serving the Port of Baltimore, are the Pennsylvania, the B & O, the Western Maryland, is that correct?

A. The Canton railroad.

Q. And then the Canton Railroad?

A. Yes.

Q. Do you think that this would be a fair statement to make, Mr. Clark?

A. Well—

Q. Practically all of the large marine terminals in Baltimore used for ocean shipping are either owned or operated by the three trunkline and one terminal railroad serving the port, is that a fair statement to make?

A. I think that is a fair statement.

Q. Mr. Clark, the next questions have to do with the description of facilities. I believe you described generally the facilities of the Pennsylvania.

Maybe before I finish with that, could you give us some idea of the value of these Pennsylvania facilities in the Port of Baltimore, an over-all figure? I notice you gave that for Philadelphia.

A. I do not have the figure, but I believe it has been submitted by some other witness.

[fol. 620] Mr. Macleay: Mr. Davis, I believe.

Mr. Costello: Pardon?

Mr. Macleay: I believe Mr. Davis has that.

Mr. Bongartz: Why don't you ask him?

Mr. Costello: Mr. Davis?

Mr. Macleay: Yes.

Mr. Costello: All right.

Mr. Macleay: He gives a rather complete description of the facilities at the Port of Baltimore, and I believe quite comprehensive figures as to costs.

Mr. Costello: All right.

By Mr. Costello:

Q. Mr. Clark, I wonder if you would just describe the facilities of the Baltimore—briefly, the facilities of the Baltimore and Ohio Railroad at Baltimore?

In that connection you might want to use this map, it is the only map that I have.

Mr. Bongartz: As I understand it—I do not like to interrupt Mr. Costello's cross-examination of this witness, but it is my understanding, Mr. Examiner, that this type of information was covered by another witness.

Wouldn't it be more orderly for Mr. Costello to get into this with another witness? Where did you get the map you are looking at?

Mr. Costello: Well, it says on it, Mr.—

Mr. Bongartz: I am not asking what it says on it; where [fol. 621] did you get it, who furnished it to you?

Mr. Costello: Someone on our side furnished it. It is compiled by the Industrial Bureau—

Mr. Bongartz: Isn't that witness Davis' map?

Mr. Costello: No, it is not. If you wish to give me a copy of Mr. Davis' map, maybe we could use that. This happens to be the only map I have.

Mr. Macleay: Mr. Costello, that is Mr. Davis' map. Mr. Davis has already been submitted; this was distributed by Mr. Davis, it is the same map.

Mr. Costello: Fine, all right. Good. Is there any objection to going on with this cross-examination, then, Mr. Examiner?

Mr. Bongartz: I think that it ought to be directed to the witness who put this kind of evidence in. Mr. Clark has

put in some testimony about Baltimore to be sure with respect to the Pennsylvania Railroad. There was another witness who covered the type of information that Mr. Costello is now asking Mr. Clark about. Why not cross examine the witness in an orderly fashion?

Mr. Foley: Mr. Examiner, that is said because that witness has not been called for cross-examination.

Mr. Macleay: You have a perfect right to call him.

Mr. Foley: On pages 19 and 20, not merely with regard to the Pennsylvania, but with regard to facilities generally [fol. 622] in Baltimore, I see no reason why he should not be examined particularly when there is no one else at this stage we can cross-examine.

Mr. Macleay: If they wanted to cross-examine, Mr. Examiner, they should have asked for the witness who testified in some detail on that port.

Mr. Costello: I submit, Mr. Examiner, this is proper cross-examination.

Mr. Bongartz: This is cross-examination on another witness' testimony.

Exam. Boat: The objection is overruled.

Go ahead.

By Mr. Costello:

Q. Mr. Clark, with that map in front of you, or this map in front of you, I wonder if you would please briefly describe the facilities of the Baltimore and Ohio Railroad at Baltimore?

A. You do not have the key that goes with this, do you?

Q. Well—

Mr. Bongartz: Why don't you get Mr. Davis' testimony out so Mr. Clark can have the key?

Mr. Costello: I am cross-examining Mr. Clark right now.

Mr. Bongartz: In view of the fact, Mr. Examiner, that this witness is being cross-examined on some other witness' testimony, I think he should have the aid of the testi- [fol. 623] mony that he is being questioned about.

Mr. Costello: That isn't true. We have an operating witness here who has given operating testimony about all

three ports. I certainly have the right to develop information.

Exam. Boat: Come to order, please.

The Witness: Are you ready?

Mr. Costello: Yes.

By Mr. Costello:

Q. Do you want to start at the Locust Point terminal of the Baltimore and Ohio, and briefly describe the facilities there, Mr. Clark?

A. The B & O has a number of piers at which ships dock, running from No. 3 to, I do not know, is this going to do much good, if I am referring to No. 3?

Q. Well, why do you not tell us the number of their piers?

Am I correct, Mr. Clark, that the B & O at its Locust and Curtis Bay Terminals has 7 covered general merchandise piers?

A. Well, they have that number of piers. I do not know as they personally designate them as merchandise piers. They had one that they designate as a lighterage pier, and the other one they speak of as piers, because ships dock at those particular places.

Q. Does the B & O in addition, Mr. Clark, have two open piers and two coal loading piers?

A. That is right.

[fol. 624] Q. And does it have also a grain elevator facility?

A. It has a grain elevator facility and an ore facility.

Q. This ore pier is a modern ore pier, is it not?

A. Yes, sir.

Q. Do you know, Mr. Clark, that the supporting yards of the Locust Point Terminal accommodate approximately 2700 cars?

A. Not quite that many, I think somewhere as between 2,000 and 2300 or 2400.

Q. And do the Curtis Bay Terminal yards accommodate approximately 4400 cars?

A. Well, I do not know the exact figure, but they are large yards.

Q. Would you be willing to take that number as a correct number? I got that from the Port of Baltimore, 1957 handbook?

A. Well, I do not like to accept advertising material as definite, but it is a large-capacity yard.

Q. Anyhow, it is a yard with a large capacity?

A. That is right.

Q. Are you familiar, Mr. Clark, with the fact that in connection with these various piers they have other facilities such as a gantry crane?

A. The piers are amply equipped, if that is what you mean, it has cranes, elevators, and so forth.

Q. Would you agree with me that the water department [fol. 625] alongside these piers is 35 feet?

A. Sufficient to dock ships.

Q. Now, in connection with the facilities of the Western Maryland, is it correct that at Port Covington the Western Maryland operates 4 covered General Merchandise piers?

A. I believe that to be correct.

Q. And does the Western Maryland likewise have one modern 6-berth ore pier?

A. They have an ore pier and a coal pier.

Q. And also five million-bushel capacity grain elevator, do they not?

A. They have a grain elevator, I do not know its capacity.

Q. Do you know that grain elevator has the largest grain facility on the eastern seaboard?

A. I never heard that.

Q. You are not in position to say whether that is or is not the fact?

A. That is right.

Q. And in connection this ore pier, Mr. Clark, do you know that that is one of the largest as well as one of the most versatile bulk unloading facilities on tidewater?

A. I know it is an excellent pier facility.

Q. And in connection with this Western Maryland facility, would I be correct in stating that the facilities have supporting yards for approximately 2,000 cars?

[fol. 626] A. Well, they have amply supporting yards, I like to put it that way.

Q. And also ground storage space for several hundred cars.

A. Yes, sir.

Q. Now, these grain facilities at Baltimore are very extensive, are they not—very large and extensive facilities?

A. They are.

Q. As a matter of fact, they are the largest grain elevators at any Seaboard port in the United States, are they not?

A. I can't answer that.

Q. Now, in connection with the Canton Railroad.

A. Yes.

Q. I believe that has one covered general merchandise pier, does it not?

A. Well, the Pennsylvania leases one of their piers, pier 11, and they have an additional one.

Q. In addition, it has an open pier, does it not?

A. Yes, sir.

Q. And a modern ore pier?

A. That is right.

Q. Six pier warehouses?

A. I don't know whether there are six or not. They have sufficient warehouses for the freight.

Q. Does the Canton Railroad have supporting yards for approximately 1200 cars?

[fol. 627] A. It has sufficient supporting yards. I don't know what the capacity is.

Q. And do they have, also, very extensive storage space for cars—I mean for ground storage?

A. I don't know about that on the Canton Railroad whether they have requirements for such ground storage. They have sufficient space for whatever business they are handling. I will put it that way.

Q. This Port of Baltimore handbook states they have ground storage space for 30,000 cars. I don't know whether that is a misprint or not.

A. How many?

Q. It says the terminal supporting yards have a capacity of 1200 yards, and there is ground storage space for 30,000 cars. I am afraid maybe that is a misprint.

In any event, they do have ground storage space, have they not?

A. They have space for ground storage.

Q. All right. Now, in connection with dockage, dockage charges, Mr. Clark, isn't it a fact that no dockage charges are assessed by the railroads at Baltimore for berthing vessels at railroad piers?

A. The same situation as established at Philadelphia.

Q. In other words, they do not make any charges?

A. Whatever my answers were on Philadelphia, the same [fol. 628] things are applicable to Baltimore.

Q. In other words, likewise, there are no wharfage charges?

A. I believe it is wharfage and dockage at other than railroad piers, I disclaim any knowledge.

Q. As far as railroad piers, no wharfage and no dockage charges are assessed?

A. That is right.

Q. The free time at Baltimore is the same as at Philadelphia and New York?

A. Yes, sir.

Q. Now, as I understand it, there are at Baltimore, no charges assessed by the railroads for loading or unloading export or import freight which pays the rail carrier a minimum rate?

A. At the in-shore end, with the exception of open-top cars.

Q. With the exception of open-top?

A. Yes.

Q. Now, do the railroads unload grain in to the elevators at no charge to the shippers?

A. We are getting into where the lin-haul rate stops, and so forth. I don't know anything about that.

Q. I did not ask, Mr. Clark, about line-haul.

A. That is implied in the question.

Q. Let me rephrase it this way: Do the railroads per- [fol. 629] form the unloading of grain into elevators at Baltimore?

A. It is done by contract.

Q. On the subject of lighterage, that is performed in

Baltimore at no cost to the shipper when it is performed, is it not?

A. The actual water movement itself is so performed.

Q. Mr. Clark, in your statement you have indicated that at Baltimore 29.3 per cent of the Pennsylvania Railroad export-import traffic was given water service.

Does that approximately same percentage obtain, or is it greater for the other railroads, namely the B & O and the Western Maryland?

A. I do not know the actual facts. I would not want to say one way or the other.

Q. Mr. Clark, isn't this the situation at Baltimore, that all import banana shipments are handled by car float to railheads for inland movement?

A. Yes, sir.

Q. That is correct?

A. To the extent that they are handled there.

Q. Well, doesn't the B & O handle quite a substantial movement of import bananas?

A. They do. What I meant was to the extent they handle bananas, that was the way it was handled?

Q. Surely. Well, due to the fact that the railroad pier [fol. 630] locations in Baltimore are more or less separated substantially from each other, doesn't that result in—doesn't that require more lighterage or floating of traffic between these piers?

A. No. Your ships are docking at your piers, at your railroad piers and the lighterage is at a minimum.

Q. Well, but you said that 29 per cent of—almost 30 per cent of the Pennsylvania import-export traffic is lightered, or car-floated, didn't you?

A. I still maintain my previous answer is correct.

Q. Yes. In other words, if you have to take a shipment from—

A. At New York, it was over 80 per cent.

Q. Just a moment, Mr. Clark. We are talking about Baltimore right now. In other words, if you had a shipment that was going from, say the Canton Terminal of the Pennsylvania Railroad down to this Courtis Bay Terminal of the B & O, wouldn't that ordinarily be lightered or car-floated?

A. It would probably be a local point terminal, but it would be lightered, yes. But there would not be too much of it.

Q. All right. I think you answered the question.

Now, Mr. Clark, in the handling of export and import cars in trains by the Pennsylvania into Baltimore, I wonder if you would please briefly describe just how these export-import cars come in in the Pennsylvania trains and where [fol. 631] the hold yards and the break-up yards are, coming from differential territory?

A. They enter Baltimore at what is known as our Bayview Yard.

Q. Yes, where is that Bayview yard?

A. I am trying to locate it on this map here.

At the extreme—what are you going to do now?

Q. That is all right, you just proceed, Mr. Clark, I can follow you?

A. This is not in evidence, you know, as yet.

It is at the extreme right center of the railroad siding and industrial track map of the City of Baltimore outlined in red.

Q. And is that in the City of Baltimore?

A. That is in the City of Baltimore.

Customarily that would be the terminal of the train which originates at Enola Yard.

Q. That is again the yard that you previously referred to across the river from Harrisburg?

A. That is right.

Q. I wonder if I could just interrupt you there for just a moment, Mr. Clark.

Coming in to Baltimore, is it my understanding that these trains have to pass through a number of tunnels coming into Baltimore?

[fol. 632] A. Well, they don't have to pass through a number of tunnels, they pass through this—this particular train passes—wouldn't pass through any tunnel.

The tunnels are located at the passenger station, each side of the passenger station, whereas this yard is located quite a few miles to the east of the first tunnel.

In other words, the freight trains coming into Baltimore from Enola do not have any tunnel obstructions.

Q. If they came in from some other direction, would they have that?

A. They would have to come from the South, such as Potomac Yard here at Washington.

Q. I see.

A. That would be the ordinary procedure for the road train to stop there, the one reason being they are operated by electric power, and you do not have the trackage from Bayview to Canton Yard at the waterfront electrified.

However, if that train is hauled by a diesel locomotive, we sometimes run them directly into Canton yard.

Q. Excuse me, Mr. Clark.

About what is the capacity of this Bayview Yard?

A. Oh, it is a couple thousand of cars, I would say, roughly. I don't want to be pinned down to an exact figure on any of these, without referring to the record.

Q. Yes.

[fol. 633] A. That is a hump yard, and the export-import cars would be classified from the inbound train and moved by runner service from Bayview yard to Canton yard which is outlined on this same map along the Patapsco River.

There, of course, the cars would be again classified according—through the tracks supporting the piers and held pending orders for movement to the piers—for ships.

Q. Beside this Bayview yard you mentioned the Canton Yard and Canton Terminal, are there any other hold yards that would be involved in this traffic that are located in that area?

A. No, we have a yard known as Highland Town yard, intermediate between Bayview and Canton, but it would have to be a tremendous accumulation of export-import freight before that would be involved in this particular thing.

In other words, the usage of any trackage in Highlandtown yard for export-import would be unusual.

Q. About how many miles is it from Bayview Yard to Canton Yard?

A. About 3 to 4.

Q. What type of area would the trains pass? It is an industrial area or what other type?

A. Part of that operation is elevated and there are a few industries along the route.

Q. That is within the city limits of Baltimore, is that it? [fol. 634] A. That is right. It is not intensively developed from an industrial standpoint as some other sections.

Q. Mr. Clark, I wonder whether you would also briefly describe for us the operation of the Baltimore and Ohio Railroad coming into Baltimore if you would?

A. Their road trains ordinarily break up at the Locust Point yard previously mentioned, and they are classified. Any of the export cars would be advanced to the track supporting the piers previously mentioned, and held pending orders for movement on to the piers.

Q. What would be the yard back of the Locust Point yard, the classification or perhaps additional holding yard back of that?

A. You mean back on the road?

Q. Yes.

A. I don't know where they would start that particular road train out of.

Q. Incidentally, when these trains of the Pennsylvania come in to Bayview yard and then they are switched down to the Canton Yard, they would be handled in that move by yard crews I take it?

A. Transfer crews.

Q. Transfer crews. Thank you.

In connection now, with the trains of the Western Maryland that contain export-import traffic, how would they [fol. 635] be handled into Baltimore?

A. They would be handled the same as the B & O except, of course, they would go into the Port Covington Yard on the waterfront and advanced to the pier yards in the same manner.

Q. Where are their hold yards located back of that area?

A. I am not familiar with the territory behind where their crews would start out of. Of course, in holding they would be held at the waterfront—you mean holding for disposal on the piers.

Q. Mr. Clark, where would be the nearest point of transfer of these cars of the Western Maryland with respect to

a transfer, say—well, first to the B & O and then to the Pennsylvania Railroad?

A. You mean an interchange?

Q. Yes.

A. Interchange between the railroads?

Q. Yes.

A. We have an interchange with Western Maryland at Fulton Junction which is in the City of Baltimore. It is kind of hard to describe it without giving a reference to this map. It would be beyond the South portal of the B & P tunnel.

Q. And about where is this B & P tunnel?

A. Well, that leads to the passenger station. That is the tunnel that is south of the passenger station.

Q. How far is that?

[fol. 636.] A. On this particular map it is near the center of the map.

Q. How far would that be from the Western Maryland Terminal, their waterfront terminal?

A. That is a considerable distance.

Q. Well, could you give us an approximation in the number of miles? You do not have to make it specific, but an approximation of the distance.

A. Well, I can give you a rough idea, that looks like close to four miles—roughly.

Q. Is that rail mileage?

A. That is just across the map here. Actually, it probably would be a little bit longer on account of the curves of the railroad.

Q. How about the nearest point of interchange of the Western Maryland with the B & O?

A. Of course they are adjacent to each other, so I presume they could interchange right immediately in the vicinity of their yards. I am not sure about that particular point.

Q. I thought you were looking for something.

A. No, I finish my answer.

Q. I am sorry, Mr. Clark. I saw you thumbing through that book, and I thought you were looking for something.

Mr. Bongartz: He is looking at the other evidence.

By Mr. Costello:

Q. Mr. Clark, I do have one further question, and that [fol. 637] is, in addition to the yards you have already described, what other yards of the Pennsylvania are there in Baltimore? You mentioned the Bayview.

A. Mount Vernon.

Q. Mount Vernon. About what is the capacity of the Mount Vernon yard?

A. That is our perishable terminal yard. That would probably run to two or three hundred cars.

Q. All right.

A. Gwynn's Run.

Q. About what is the capacity of that yard?

A. A couple of hundred.

Q. Any others?

A. Then you will have smaller auxiliary yards like Frederick Road where you have team track deliveries.

Q. Are there any larger yards just outside of the City of Baltimore?

A. No, Bayview and Canton Yards are the largest yards in Baltimore.

Q. Now, in connection with the B & O, what other yards of the B & O are there in Baltimore?

A. I do not know the auxiliary yards of these other railroads there.

When you get into the yard proposition, what one man would consider a yard another one might not.

[fol. 638] Q. Well, how about the Western Maryland, can you give us any further information on that, Mr. Clark?

A. No, I can not.

Q. So, in other words, they may have additional yards, but you do not wish to touch on that?

Mr. Bongartz: He did not say that, Mr. Examiner.

Mr. Costello: I am just asking if that is not the fact.

By Mr. Costello:

Q. They may have additional yards, but you are not sure of the fact?

A. I am not certain of their locations and therefore I would rather not identify them.

Q. Of course, I am willing to accept that statement.

Mr. Costello: No further cross-examination.

Exam. Boat: Any redirect?

Mr. Bongartz: Before redirect, Mr. Examiner—I only have a very few questions.

We have checked on a question that Mr. Costello asked Mr. Clark in connection with domestic traffic, and I would like to have the opportunity of Mr. Clark to have the result of that check.

Redirect examination.

By Mr. Bongartz:

Q. Mr. Clark, you were asked regarding the nature of the tonnage shown on page 5 of exhibit 54, domestic tonnage at New York.

Have you, in the meantime had that situation checked and [fol. 639] are you in position now to state what the situation is?

A. Yes, sir. That represents tonnage only delivered or received from private shippers or reserves. That does not include the fruits and vegetable tonnage or any station tonnage.

Q. You mentioned the number of yards in Philadelphia, I think you said something about 50 yards.

Would you please give us some idea of what those yards are for, just characterize them?

A. The majority of those yards are located back from the waterfront. Of course Philadelphia is noted as an industrial city, and in order to effect delivery in the various sections of that city, we make use of these auxiliary yards.

Q. Apparently having in mind the situation on the Lackawanna with respect to congestion as between freight and commuter traffic on account of the tunnel east of Hoboken, Mr. Costello asked you about the main line of the Pennsylvania outside of Philadelphia as to whether that was a commuter line.

Will you please state how many tracks are past the main line going west out of Philadelphia, and also whether

there is any interference on that line between commuter trains and west or east-bound freight trains?

Mr. Costello: Mr. Examiner, I would like to just object to that first clause in Mr. Bongartz' statement there about Hoboken and the Lackawanna. There was nothing that had anything to do with my questioning of Mr. Clark.

[fol. 640] Mr. Bongartz: I could not see any other relevancy to it.

Mr. Costello: I do not have any objection to the rest of the question, but I think that part should be stricken.

Exam. Boat: He is not answering that part of the question.

Mr. Bongartz: No, he is not.

Mr. Costello: It was just argumentative on the part of counsel.

Mr. Bongartz: I was trying to give some relationship to it, Mr. Examiner.

Exam. Boat: You may answer.

The Witness: Four main tracks. The freight and passenger traffic do not interfere with each other because sufficient facilities are provided so that will not happen.

By Mr. Bongartz:

Q. Now, at Philadelphia, you were asked about the Reading's floating equipment, that is, the marine equipment. You mentioned 19 car floats. Are you in a position to state what those floats are used primarily for?

A. They are primarily used for the transportation of Reading Company freight between Philadelphia and Camden, not the export-import freight.

Mr. Bongartz: That is all. Thank you.

Recross examination.

By Mr. Costello:

Q. Mr. Clark, in view of your statement concerning this [fol. 641] table on page 5, I wonder if you would please be good enough to furnish me with the tonnage, using pier station tonnage, domestic pier station tonnage, and the

domestic fruits and vegetables tonnage, so that we will get the whole picture here on page 5?

Mr. Bongartz: At the moment, Mr. Costello, I see no reason why we can't give that to you. I don't know what work is involved in it, and I think we would have to take it under advisement.

Mr. Costello: Well, that is all right with me, Mr. Examiner. The only point is, if it is not—I just have one further question.

By Mr. Costello:

Q. Are there any other items that are omitted besides the pier station and fruits and vegetables?

A. None that I know of.

Q. None that you know of?

A. No.

Q. If this information is not furnished, I would think it would only be fair that this figure be physically stricken from the—

Mr. Bongartz: Do you mean the 161,000?

Mr. Costello: Yes, as it has no significance at all.

Mr. Bongartz: Let's take it out now. We will take it out. It will save us time, just take it out.

Mr. Costello: No, Mr. Bongartz, I prefer to have that [fol. 642] information furnished.

Mr. Bongartz: No, he has given us this statement. When we have asked for things, Mr. Examiner, we have gotten nowhere, I think that when something like this comes up and counsel indicates that if we do not do it, he wants something else, we will take the alternative and take it out. Let's get rid of it. Just cross that line out on page 5.

Mr. Welsh: Which line is that, Mr. Bongartz?

Mr. Bongartz: The line that says "Domestic amounted to"—just cross that out.

Mr. Costello: I would just like to make this comment, Mr. Examiner.

Of course the obvious purport of showing this very small amount was to show how small their domestic traffic was as opposed to export and import. Now, it appears

that the domestic traffic is a very substantial amount, and now the Protestant railroads do not wish to furnish the figure apparently, they are taking this technical point of taking me up on my alternative suggestion.

I would still like to have the figures furnished to us.

Mr. Bongartz: You are just building up a house of cards there, it does not mean anything.

Mr. Costello: Why was it put in, Mr. Bongartz?

Mr. Bongartz: It is certainly not from the point of view that you would give it, and I would think we agreed to [fol. 643] take it out, so let it go at that, Mr. Examiner. Let's take it out.

Mr. Costello: In other words, as I get it, the Protestant railroads refuse to furnish that information, is that correct, Mr. Bongartz?

Mr. Bongartz: We have taken your alternative, we have taken it out.

Mr. Costello: You refuse to furnish that data?

Mr. Bongartz: Just a minute.

I started out by saying we would take under advisement and see what was involved in the way of work and expense, and then you came along with this suggestion that if we did not do it—I suppose that was in the nature of a threat—

Mr. Costello: It certainly was not a threat.

Mr. Bongartz: I have taken your suggestion to take it out, that is what I have done.

Mr. Costello: My comment stands on the record, too, Mr. Examiner.

Exam. Boat: Very well.

OFFER IN EVIDENCE

Mr. Bongartz: Mr. Examiner, I would like to offer exhibit 54.

Exam. Boat: I do not think it is clear, or made clear on the record, what the figure represented; at least I think there is doubt about it.

Mr. Bongartz: I think it is clear—do you mean on page 5?

[fol. 644] Exam. Boat: It is stricken, is that right?

Mr. Bongartz: On page 5, the reference in that table where it says "Domestic amounted to—", and then there

is a figure under New York and a figure under Baltimore, that is stricken.

Exam. Boat: Exhibit 54 as identified will be received in evidence.

(Protestant's Exhibit 54, witness Clark, was received in evidence.)

Exam. Boat: You are excused.

(Witness excused.)

Mr. Costello: I would like to make an offer of proof. If the amount of domestic traffic handled by the Pennsylvania Railroad, New York, as shown on page 5, if that showed the actual figure, it would be a number of times the amount of tonnage shown on that table which now shows 161,803 tons.

Exam. Boat: Very well.

Mr. Bongartz: I do not know whether that is an offer of proof, Mr. Examiner.

Mr. Price: Mr. Examiner, with your permission I would like to have identified verified statements of witness C. Nelson Bean and—

Exam. Boat: I think we have a man to take care of, this gentleman spoke up before.

Mr. Price: There is no cross-examination.

[fol. 645] Exam. Boat: I have others of that type, too.

Mr. Claytor: Mr. Kneesy.